

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA                   \*   Case No. 1:20CR512-1  
   \*  
vs.   \*   Greensboro, North Carolina  
   \*   February 3, 2022  
BRADLEY CARL REIFLER,                   \*   2 p.m.  
   \*  
   Defendant.                   \*  
\*\*\*\*\*

**EXPEDITED TRANSCRIPT FINAL PRETRIAL CONFERENCE/MOTION HEARING**  
BEFORE THE HONORABLE CATHERINE C. EAGLES  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:           THOMAS J. TYNAN, ESQUIRE  
                                 MICHAEL P. MCCARTHY, ESQUIRE  
                                 Department of Justice  
                                 1400 New York Avenue, NW  
                                 Washington, DC 20530

For the Defendant:           MARK A. JONES, ESQUIRE  
                                 Bell Davis & Pitt, P.A.  
                                 Post Office Box 21029  
                                 Winston-Salem, North Carolina 27120

ROBERT S. SILVERBLATT, ESQUIRE  
STEPHEN G. TOPETZES, ESQUIRE  
K&L GATES LLP  
1601 K Street, NW  
Washington, DC 20006

Also Present:                 Graham T. Green, AUSA

Court Reporter:             Lori Russell, RMR, CRR  
                                 P.O. Box 20593  
                                 Winston-Salem, North Carolina 27120

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**P R O C E E D I N G S**

(Defendant present.)

**THE COURT:** Good afternoon.

(Simultaneous response from counsel.)

**THE COURT:** All right. So let's see. Here for the --  
this is United States against -- it's Reifler, correct?

**MR. JONES:** Yes, Your Honor.

**THE COURT:** Bradley Carl Reifler, 20CR512, here for  
the final pretrial conference.

Just to be sure I know who everybody is, here for the  
Government?

**MR. TYNAN:** Good afternoon, Your Honor. Tom Tynan and  
Michael McCarthy on behalf of the United States.

**THE COURT:** All right. I'm just going to warn y'all  
if you change seats at any time during proceedings, I'm likely  
to get you mixed up today. I will try to -- like -- these  
masks. But I'll try to keep you straight.

All right. At the other table, Mr. Jones.

**MR. JONES:** Yes, Your Honor. Mr. Silverblatt is with  
me from K&L Gates, as is Stephen Topetzes, and at the far end  
of the table is Mr. Reifler.

**THE COURT:** All right. And it's Mr. Silverblatt  
here --

**MR. SILVERBLATT:** Yes, Your Honor.

**THE COURT:** -- and Mr. Topetzes?

1           **MR. TOPETZES:** Yes, Your Honor.

2           **THE COURT:** All right. Thank you.

3           And we'll -- y'all are the ones who are going to be trying  
4 the case?

5           **MR. TYNAN:** Yes, Your Honor.

6           **THE COURT:** All of y'all will be sitting here? Is  
7 that -- I'm asking who do I need to introduce to the jury?

8           **MR. JONES:** I will certainly be here every day.

9 Mr. Silverblatt will not be here every day. He'll be some of  
10 the days. Mr. Topetzes will not be here for all of the days.

11           **THE COURT:** All right. That's fine. The only person  
12 who can argue the case to the jury has to be here for the  
13 entire trial. I don't let people argue the case who haven't  
14 been present in the courtroom for the entire trial.

15           **MR. JONES:** Understood, Your Honor.

16           **THE COURT:** As long as that's you, that's fine.

17           **MR. JONES:** Yes, Your Honor.

18           **THE COURT:** Okay. The time I had the most trouble  
19 with that was a patent case where the lawyers didn't -- didn't  
20 seem to think they needed to be here all the time, but we got  
21 that straight.

22           So I have a long list, and I think that everything -- the  
23 only thing left to be filed are the exhibit and witness lists  
24 that I've asked y'all to file on February 7th.

25           Everything else has been filed, correct?

1           **MR. TYNAN:** Yes, Your Honor.

2           **THE COURT:** Is that right, Mr. Jones?

3           **MR. JONES:** Yes, Your Honor.

4           **THE COURT:** I've read the trial briefs. We've got a  
5 couple of motions in limine, a motion to dismiss.

6           So first I want to talk about the pandemic so that it is  
7 not the elephant in the room. You know, we've tried cases here  
8 during the pandemic. We tried -- I tried cases here before  
9 vaccines, as did one of my colleagues. I think it was  
10 Judge Osteen. And then since vaccines we've tried several.

11           This Omicron variant is a little different from what we've  
12 experienced before because it's so contagious and because the  
13 vaccine does not appear to be quite as good. And, of course,  
14 you know, if you're not vaccinated, it's particularly  
15 difficult, contagious, and such. On the other hand, it appears  
16 to not be making most people as sick, but, you know, that's  
17 just most people.

18           So I looked -- North Carolina has got a good dashboard.  
19 We've been following it along, and the daily numbers are  
20 definitely going down in the state as a whole. It was hard for  
21 me just to pull out the Middle District, but, you know, there's  
22 still quite a lot, more than before this surge began in --  
23 when? -- late November that we started seeing it. The positive  
24 test percentage is down significantly. That's really good.  
25 But it's still very high. It's, like, over 20 percent.

1       And there's several counties in this district that are a  
2 good bit higher. There are also some that are a good bit  
3 lower. They are probably the ones you would guess. So -- and  
4 then the hospitalization numbers are down a little bit. The  
5 peak was actually in December. So I don't know -- late  
6 December for that.

7       I don't know exactly what's -- what's going to happen in  
8 the next 10 days, but that's the situation. And, you know, I'm  
9 prepared to go forward. I just will say I've had a lot of  
10 trouble trying cases since this surge hit because people are  
11 getting sick; y'all are getting sick; the witnesses are getting  
12 sick, and that's the problem that I've had. It's not with  
13 jurors, but -- you know, so -- so if anybody wants to talk  
14 about changing the trial date, we can do that if y'all have a  
15 plan.

16       I'm prepared to go forward, recognizing that, you know, we  
17 just don't control this virus, and if anybody has any reason  
18 that we can't try it on the 14th, you need to file your motion  
19 as soon as possible. And I would ask you to just be specific.  
20 You know, if somebody actually has a positive test, I would --  
21 you know, you need to tell me so. And you can do it under  
22 seal. I don't -- you know, it's private medical information.  
23 That's fine. I'm not trying to expose anybody's health to the  
24 world, but I do need specifics.

25       The setup we'll use in this courtroom, you can see the

1 seats in the jury box. There's 14 seats there, but we'll have  
2 it arranged for eight people in the seats that are numbered 1,  
3 2, 3, 4, 5, 6, 7, 8; 9, 10, 11, the three seats in the front.  
4 The way -- we've done this different ways in different trials,  
5 but I think I'll -- Judge Osteen and I, who use this courtroom  
6 for trials, have ended up putting the rest of the jurors back  
7 in the gallery area right there, and -- are the chairs there?

8 **MR. RENTERIA:** Yes, ma'am, two of them are.

9 **THE COURT:** Two: 12, 13.

10 So we're going to have -- I think we may need to pick more  
11 than two alternates, depending on how long this trial is going  
12 to take, but -- because of the pandemic.

13 So, you know, we really don't have a lot of choices about  
14 where to put jurors, and we really don't have a good courtroom  
15 in this building where we can put all the jurors in the  
16 gallery, so -- because you can see that's really not a very  
17 good idea in here because of the setup. And in my courtroom,  
18 it's so big the jurors at the back, they can't see.

19 So we'll get the -- that's 11, 12, 13. You know, we'll  
20 have to have four or five seats back right there.

21 The jurors will come in and out through -- well, most of  
22 them, through that door right there. The ones who are seated  
23 in that corner will come through that door.

24 We will not use the jury room that usually goes with this  
25 courtroom. There's space across the hall the U.S. Attorney

1 makes -- it's usually their space, but they make it available  
2 for the jury room during the trial. And then we have been  
3 having them deliberate up in Courtroom 2 in the well of the  
4 courtroom where we can set up a big table, and they can all  
5 spread around and talk. The space across the hall is some  
6 little rooms -- little, worn rooms. They can all kind of be  
7 together, but they couldn't deliberate in there.

8       So the witness up here. The courtroom deputy switches out  
9 with -- the little cover over the microphone and wipes it down  
10 between witnesses.

11       I have been requiring everyone to wear masks during the  
12 entire proceedings. The witness has to take the mask off to  
13 testify so the jury can see the face, and in this courtroom,  
14 that's really not a problem because the witness is pretty far  
15 from everybody. In my courtroom, the witness is very close to  
16 the court reporter and to some of the jurors, but that's not  
17 true in here. So that's really not an issue.

18       And I have been letting the lawyer who is asking questions  
19 take -- y'all are all men -- his mask off while questioning the  
20 witness. I think I'm probably willing to still do that here.  
21 Now -- you know, there's -- y'all have chosen how many lawyers  
22 you want to have here, and there's not really 6 feet between  
23 you. I appreciate that. So, you know, you can certainly wear  
24 your mask as long as I can hear you and -- the witness has got  
25 to take the mask off so the jury can see, but if y'all want to

1 leave your mask on while you are questioning, that is fine so  
2 long as everybody can hear and understand you. But I will let  
3 you take it off.

4 Because of the pandemic, I'm going to ask everybody to  
5 examine witnesses from your tables.

6 For opening and closing, we will put a podium -- I don't  
7 know -- somewhere over here so you can -- you've got to be able  
8 to see the jurors back there where Mr. Renteria is in the green  
9 shirt, raising his hand. There will be some jurors back there  
10 and here, so you'll be kind of over somewhere in between the  
11 court reporter and the Government's table, be able to look at  
12 them all from a podium. You can see the screen here for  
13 exhibits.

14 Did you take out the monitors in there?

15 **MR. RENTERIA:** No, Judge, they're in the jury box.  
16 There's four of them there.

17 **THE COURT:** Oh, okay.

18 There are some monitors in the jury box too where they can  
19 see exhibits. The big one will be set up, and there's one  
20 there for the well of the courtroom so that the jurors who are  
21 back in the gallery will be able to see the exhibits as well.  
22 You'll all have monitors on your table.

23 I usually like for people to stand when they examine  
24 witnesses. It's a little less convenient to do that from the  
25 table. So if y'all would rather sit, as long as you don't get



1 too wordy -- sometimes, you know, people are too comfortable  
2 sitting, and they just go on and on and on. You know, as long  
3 as y'all don't do that on me, I'm okay with you sitting.  
4 That's what we did in state court for many years. I'm used to  
5 that. So -- so I think, given the document heavy nature of  
6 what -- of what I take the evidence will be, that I'm going to  
7 let you sit to examine witnesses.

8       You need to have all of your exhibits available  
9 electronically so that you do not have to walk up and back to  
10 the witness stand all the time. Now, that said, you know, if  
11 you need to walk up there occasionally, that happens, but you  
12 need to figure out a way that you don't have to do that.

13       And people have done that different ways. There's a video  
14 monitor there so the witness can see the exhibit. It's not the  
15 same as looking at a piece of paper, and sometimes witnesses  
16 just need to look at the piece of paper. So, you know, you  
17 have to be prepared for that. In some cases people have had  
18 notebooks for particular witnesses, you know, so that they have  
19 a hard copy in front of them. That's fine. You know, you can  
20 show them on the monitor and, if you have a problem, take the  
21 paper copy up there.

22       But I don't want the -- I don't want you going back and  
23 forth. So, you know, none of this approach the witness 5,000  
24 times during the trial. You need to examine from the table and  
25 not move back and forth. First of all, it takes up too much

1 time, and second of all, during the pandemic, it's just not a  
2 good idea.

3 So those generally are the precautions that we will be  
4 taking.

5 We will use this room -- this courtroom for jury selection,  
6 and when -- y'all will not be able to get in here Monday  
7 morning at the -- before the trial starts because the jurors  
8 will be coming in here to be checked in and oriented and all  
9 that stuff. And when y'all come in, there will be eight --  
10 eight -- there will be eleven in the box, all right, and then  
11 the rest of the jury panel will be out there in the courtroom.  
12 And I will question these eleven.

13 So I'm going to have a group of jurors here in the morning,  
14 and then I'm going to have another group of jurors in the  
15 afternoon. I'm a little concerned we might not be able to get  
16 a jury from -- because we can only have so many jurors in here.  
17 You know, I can't get 40 people in here, so -- if I could, we  
18 could do it all in the morning probably, but we have to do it  
19 in two different groups. So I'll probably have a second group  
20 come in, you know, around 12:30 or so, get checked in and be  
21 available to us around 1:00. Maybe I'll have them come in at  
22 noon.

23 But my experience is we run out of jurors before we run out  
24 of time in the morning, and then we can start back early that  
25 afternoon and then maybe even get through the opening

1 statements Monday afternoon.

2 So -- but I doubt very seriously we'll be able to get a  
3 witness on the stand on Monday because if I'm going to pick 12  
4 jurors plus, you know, at least three alternates, maybe four,  
5 that's just going to take -- I'm fast on jury selection, but,  
6 you know, the logistics of it and having to do it in two -- two  
7 groups is going to take us a while.

8 So y'all will need to be in your conference room spaces on  
9 that Monday morning, and then the clerk will call and tell you  
10 when we are ready, and she'll tell you, you know, how to -- how  
11 to get in the room. Since Mr. Reifler is not in custody,  
12 there's no issues there. He can just walk in with his  
13 attorneys, and there we are.

14 So -- hold on.

15 **MR. JONES:** Do we know where our conference rooms will  
16 be? On two?

17 **THE COURT:** I don't know. Possibly Ms. Winchester  
18 knows.

19 **THE COURTROOM DEPUTY:** Judge, they'll be on the third  
20 floor.

21 **THE COURT:** On the third floor.

22 **MR. JONES:** Thank you.

23 **THE COURT:** For the selection, as I say, we'll put  
24 eleven in the box. Y'all get -- how many challenges do you  
25 get? I have it written down. The Defendant gets 10, and the

1 Government gets 6, right?

2 **MR. JONES:** Yes, Your Honor.

3 **MR. TYNAN:** Yes.

4 **THE COURT:** Yes. Okay.

5 So the way we'll do it, we'll put eleven in. I'll ask them  
6 all these questions. When I finish and I -- you know, I've  
7 excused whoever I need to for cause and I've replaced them and  
8 I have eleven jurors that I'm satisfied with, then I will --  
9 we'll do all the bench conferences over here. We'll test it in  
10 a little bit. One of you from each side, only one, will step  
11 over here, and I'll say to you, "Did I forget to ask them  
12 anything important? Do you want me to follow up? Did you want  
13 to strike anybody for cause?" You know, anything you want to  
14 say.

15 Then you'll go back, and then you'll exercise your  
16 peremptories after I've done whatever I finish doing. You'll  
17 do that in the way that's common in this district. The clerk  
18 will give you a piece of paper; you'll write them down; you'll  
19 do it at the same time. You'll give your pieces of paper to  
20 the clerk, and the clerk will excuse the jurors who are -- who  
21 y'all have excused, and nobody will know whether the Government  
22 excused them or the Defendant excused them. And then however  
23 many nobody excuses, I'll let those people -- from the morning  
24 group anyway, I'll let them probably go and tell them to come  
25 back, and -- in any event, I'll let them leave the courtroom.

1       We'll fill more seats, and we'll go until we have -- you  
2 know, I would expect the second time around we just fill it up  
3 with eleven more people because, you know, there's no reason  
4 not to; and then we'll just keep going until we've got enough  
5 jurors.

6       Is that reasonably clear?

7               **MR. TYNAN:** Yes, Your Honor.

8               **THE COURT:** Yes?

9               **MR. JONES:** Yes.

10              **THE COURT:** It's the way I always do it, Mr. Jones.

11              **MR. JONES:** I was just thinking about how -- the use  
12 of peremptories against the lower side of the panel when you  
13 already have a certain number selected, but I don't see a  
14 problem with that format.

15              **THE COURT:** Yeah, I mean, it's, you know, always a  
16 challenge to know when to hold onto a challenge and when to use  
17 it because you don't know who's coming next, but that's always  
18 a problem.

19       So that's the logistics of the jury selection.

20       We will have bench conferences, to the extent we need  
21 them -- and I hope we will not need very many -- up here. And  
22 because of the pandemic, you know, I just need one of you to  
23 come so -- and it would need to be the one who is asking the  
24 questions or defending that witness. So you just need to be  
25 prepared for that.

1 Is it all set up, Mr. Renteria?

2 **MR. RENTERIA:** It is.

3 **THE COURT:** Can I just -- I kind of feel like *Family*  
4 *Feud*. One of you from each side step up here, and we'll test  
5 it out and be sure it works.

6 (The following bench conference occurred while testing the  
7 equipment.)

8 **THE COURT:** All right. This is the test.  
9 Can y'all both hear me?

10 **MR. TYNAN:** I can hear you loud and clear, Your Honor.

11 **MR. JONES:** I can also hear you, Judge.

12 **THE COURT:** And I can hear y'all.

13 Now, let me just turn and look at the court reporter and  
14 see if she can hear all of us.

15 Yes.

16 Can the lawyers at the table hear us?

17 They can. I'm getting a yes. This is a problem.

18 **MR. RENTERIA:** Do you want to make the white noise  
19 louder, Judge?

20 **MR. JONES:** I wonder if Mr. McCarthy can hear us.

21 **MR. TYNAN:** It does not appear that he can.

22 **MR. JONES:** He seems less likely to be able to hear  
23 us.

24 **THE COURT:** Mr. McCarthy, can you hear us?

25 **MR. JONES:** Oh, dear.

1           **THE COURT:** What about now? Can you hear me now?

2           **MR. JONES:** Yes.

3           **MR. TYNAN:** I can hear you, Your Honor.

4           **THE COURT:** Can you hear me now?

5           No.

6           **MR. RENTERIA:** I think he still has -- we turned up  
7 the white noise, Judge, to see if it's any better.

8           **THE COURT:** Can we turn this one down? Well, that's  
9 just hardly tolerable.

10          **MR. RENTERIA:** If you want the white noise less, we  
11 can turn the volumes of the microphones down.

12          **THE COURT:** I think we might have to do that.

13          Mr. McCarthy, can you hear me now?

14          He's not nodding.

15          Mr. Reifler, can you hear me now?

16          Apparently not.

17          That's at least better, but the white noise is awful, isn't  
18 it?

19          **MR. RENTERIA:** If for some reason you need them  
20 louder, we can turn the speaker volume louder here.

21          **THE COURT:** Can you turn the microphone down?

22          **MR. RENTERIA:** Yes, ma'am, we can. It's underneath  
23 the bench.

24          **THE COURT:** Oh, okay.

25          **MR. RENTERIA:** Just yours or all of them?

1           **THE COURT:** I don't know who they could hear.

2           (The following occurred in open court.)

3           **THE COURT:** Mr. McCarthy, could you hear all of us  
4 earlier or just me?

5           **MR. MCCARTHY:** I could hear you the best. I could  
6 hear them, but I couldn't make out what they were saying. But  
7 once --

8           **THE COURT:** This is my problem because I speak too  
9 clearly.

10          **MR. MCCARTHY:** But once the white noise was turned up,  
11 all of your voices -- your voice especially, Your Honor -- I  
12 couldn't hear.

13          **THE COURT:** Okay.

14          **MR. JONES:** Can we stick Mr. Green in the corner and  
15 use him as a mock juror?

16          **THE COURT:** Mr. Green, can we impose on you?

17          **MR. MCCARTHY:** Do you want me to sit over --

18          **THE COURT:** I'm going to ask Mr. Green to do it.  
19 Just pretend you're a juror.

20          **MR. GREEN:** The closest probably?

21          **THE COURT:** Yeah, we'll see how that works.

22          (The following bench conference occurred while testing the  
23 equipment.)

24          **MR. JONES:** I expected if I had an objection, this is  
25 probably the volume at which I would try to talk and be heard



1 and understood by the court reporter.

2 **MR. TYNAN:** Same, Your Honor, this is my volume.

3 **THE COURT:** All right. And I will say denied, denied,  
4 denied, always denied, overruled, overruled, Rule 403.

5 (Conclusion of the bench conference.)

6 **THE COURT:** Could you hear us, Mr. Green?

7 **MR. GREEN:** I could not.

8 **THE COURT:** All right. Great.

9 **MR. RENTERIA:** And the court reporter got everything  
10 y'all said?

11 **THE COURT:** You got it all? Okay.

12 The record will reflect that we have tried out the bench  
13 conference system, and after a few glitches, it appears to be  
14 working so that I could hear the lawyers; they could hear me;  
15 the court reporter could hear all of us; and nobody else in the  
16 courtroom could hear us. So I think we're set with that.

17 I hope we will not need many bench conferences. I really  
18 appreciated all the heads-up that y'all gave me in the trial  
19 briefs about the evidence issues likely to occur. Thank you.  
20 I'll be prepared.

21 Now, I have in a couple of cases been able to say to the  
22 jury and the jury panel that all the lawyers and the defendant  
23 and all the courtroom personnel have been vaccinated because  
24 I've been vaccinated and boosted, and I don't mind telling  
25 them. I think it's a little reassuring to people. If all of

1 you have been boosted or at least vaccinated and are willing to  
2 share that, we can tell them that. If everybody is not, then,  
3 of course, I will not. I'm giving you a moment to consult.

4 **MR. TYNAN:** Your Honor, the Government doesn't have  
5 any objection to that.

6 **THE COURT:** You've both been vaccinated then?

7 **MR. TYNAN:** Both been vaccinated and boosted.

8 **THE COURT:** All right.

9 **MR. JONES:** So I believe everybody here has been  
10 vaccinated. However, I may be having somebody from my office  
11 to help with the computer -- help with that part, and I  
12 don't -- I'm not quite positive of that person, so I'm not in a  
13 position to --

14 **THE COURT:** To say?

15 **MR. JONES:** That's correct.

16 **MR. TYNAN:** I assume our law clerk who will be helping  
17 us with exhibits and things like that is also vaccinated, but  
18 I'm assuming that.

19 **THE COURT:** How about if I just say the people at  
20 counsel table -- that would be accurate -- and courtroom  
21 personnel have been vaccinated. I can't speak for everybody in  
22 the courtroom, but for the people in the well, I will --

23 **MR. JONES:** I think that -- we would just need to  
24 confirm that first.

25 **MR. TYNAN:** Same, Your Honor. I mean, we'll have our

1 case agent, and I assume, like all -- they're all vaccinated.

2 **THE COURT:** Federal employees?

3 **MR. TYNAN:** Federal employees and therefore  
4 vaccinated. But I would also like to confirm that as well.

5 **THE COURT:** Well, if y'all would check in with  
6 Ms. Winchester and let her know.

7 Let me ask -- speaking of people helping with the exhibits,  
8 the place where we had the Government's person who managed the  
9 exhibits in the last trial I did was right there, but I think  
10 we may have more jurors in this case.

11 **MR. RENTERIA:** So, Judge, there still is a table here,  
12 and I was conferring with the Government. I think they had  
13 said they were going to put their person at the table, and  
14 we'll just adjust the table over to the left so they're away  
15 from the jurors and not near the table.

16 **THE COURT:** All right. That's good. Okay. Because  
17 we just need everybody not to be in the laps of the jurors.

18 And are you going to have, Mr. Jones, your own person  
19 managing exhibits, or has the Government offered to make their  
20 system available?

21 **MR. JONES:** I'm waiting for the Government to make  
22 that offer, and I'd be happy to accept it, but --

23 **MR. TYNAN:** We're happy to work with defense counsel  
24 on that.

25 **THE COURT:** All right. Great. I mean, that has been

1 what has been happening since the pandemic, even before the  
2 pandemic. You know, it's usually just easier. So if you're  
3 willing to do that -- now, for any defense exhibits, you'll  
4 need to --

5 **MR. JONES:** Yes, Your Honor.

6 **THE COURT:** -- figure out how you're going to work  
7 with that and cooperate with the Government or do it  
8 yourselves.

9 **MR. JONES:** I would anticipate, at least for any  
10 substantive defense evidence, that we would have somebody to  
11 work with the machine, whether it's counsel or an assistant.

12 **THE COURT:** Okay. Good.

13 Now, my -- my thought was let's do logistics first, and  
14 then I'll hear from you on the other stuff.

15 The voir dire, jury selection, here is what I propose --  
16 I'm not going to tell you everything I'm going to tell the jury  
17 because most of it is just the usual stuff.

18 All right. The defense -- the Government attorneys I need  
19 to introduce, Mr. McCarthy and Mr. Tynan; the defense  
20 attorneys: Mr. Jones, Mr. Silverblatt, and Mr. Topetzes.  
21 Right?

22 **MR. JONES:** Yes, Your Honor.

23 **THE COURT:** And, Mr. Green, are you going to be here  
24 for the whole time? Do you need to be introduced?

25 **MR. GREEN:** No, Your Honor. We'll have at least one

1 person from our office probably seated back here just to be  
2 available to answer any questions for our colleagues.

3 **THE COURT:** All right. Thank you, Mr. Green.

4 I intend to tell the jury at the very beginning, you know,  
5 when we're starting jury selection, that the defendant,  
6 Mr. Reifler, is charged with four counts of wire fraud and one  
7 count of perjury. The Government contends these events  
8 occurred between August and October 2016, although some of the  
9 background occurred as early as 2015. He has entered a plea of  
10 not guilty to those charges, and we're ready to select a jury.

11 More specifically, you will hear evidence that Mr. Reifler  
12 was an investment advisor working with North Carolina Mutual  
13 Insurance Company in Durham and Port Royal -- I wasn't sure of  
14 the full name of that reinsurance company, though I think  
15 Mr. Jones put it in his trial brief.

16 **MR. JONES:** I did, but I think the Court has already  
17 tread into disputed facts.

18 **THE COURT:** Uh-huh. Right. Exactly. I said, "You  
19 will hear evidence that..." and then "the Government contends  
20 that he...."

21 Will they not hear evidence that Mr. Reifler was an  
22 investment advisor?

23 **MR. JONES:** Well, we'll also hear evidence that he was  
24 not an investment advisor, and my concern was the Court  
25 saying -- forecasting the Government's evidence and not the

1 defense evidence.

2 **THE COURT:** Right. Hold on.

3 (Pause in the proceedings.)

4 **THE COURT:** What's the full name of this reinsurance  
5 company? Port Royal what?

6 **MR. TYNAN:** Reassurance Company, Your Honor.

7 **THE COURT:** Reassurance?

8 **MR. TYNAN:** Yes.

9 **THE COURT:** And where are they?

10 **MR. JONES:** They're at Cayman Islands.

11 **MR. TYNAN:** Cayman Islands.

12 **MR. JONES:** And they have an SPC, so they're Port  
13 Royal Reassurance Company SPC Limited. So the SPC means  
14 special purpose company limited.

15 **THE COURT:** So this is what I will intend to say: You  
16 will hear evidence that Mr. Reifler was an investment advisor  
17 working with North Carolina Mutual Insurance Company -- you'll  
18 hear evidence from the Government that Mr. Reifler was an  
19 investment advisor working with North Carolina Mutual Insurance  
20 Company in Durham and Port Royal Reassurance Company in the  
21 Cayman Islands. The Government contends that Mr. Reifler  
22 devised a scheme or artifice to defraud North Carolina Mutual  
23 and Port Royal -- or just North Carolina Mutual?

24 **MR. TYNAN:** Your Honor, the indictment alleges  
25 North Carolina Mutual Life Insurance Company.

1           **MR. JONES:** Yes.

2           **THE COURT:** Okay. And that he transmitted or caused  
3 to be transmitted communications over wires, specifically  
4 emails, in furtherance of that scheme to defraud. Mr. Reifler  
5 denies he was an investment advisor.

6           Is that right?

7           **MR. JONES:** For North Carolina -- yes, that's correct.

8           **THE COURT:** And denies that he had any scheme to  
9 defraud anyone.

10          Is that right?

11          **MR. JONES:** That's correct.

12          **THE COURT:** Okay.

13          **MR. JONES:** And I think the other place early on was  
14 the first connection after "investment advisor working with  
15 North Carolina Mutual." I mean, that's -- you have this  
16 reassurance company that's in the middle, so I don't know that  
17 there are allegations that he was working directly for  
18 North Carolina Mutual versus an investment advisor for a  
19 reassurance company. Even though we dispute them, I think  
20 that's what the allegations were.

21          **THE COURT:** Well, you know, this is just to give them  
22 a general idea and introduce them to the general points.  
23 "Working with," that's pretty vague, and I can certainly say he  
24 denies he was an investment advisor for North Carolina Mutual  
25 or for Port Royal.

1           **MR. JONES:** That's right. I think you can describe  
2 him -- say -- their accusation is that he's working -- is an  
3 investment advisor --

4           **THE COURT:** On behalf of?

5           **MR. JONES:** -- for Port Royal, not for North Carolina  
6 Mutual.

7           **THE COURT:** Well, I don't know who he was working as  
8 an investment advisor for.

9           **MR. JONES:** And that's my concern with presenting it  
10 that way.

11           **THE COURT:** But, I mean, they just need to know at  
12 this point that this is about investing funds that belonged to  
13 North Carolina Mutual Insurance Company. That -- you know,  
14 that's what they need to know, right, for purposes --

15           **MR. TYNAN:** That's certainly the Government's point of  
16 view, but I believe -- I believe defense disputes that, so...

17           **THE COURT:** Well, I have to tell them something to  
18 find out if they can be fair, Mr. Jones.

19           **MR. JONES:** I understand, Your Honor.

20           **THE COURT:** So what do you want me to tell them,  
21 besides that your client is not guilty, which I'm not going to  
22 do? I mean, that's the question.

23           **MR. JONES:** No, I think you can say that the  
24 Government contends that Mr. Reifler was an investment advisor  
25 for Port Royal Reassurance Company, which was a reinsurer for



1 North Carolina Mutual.

2 **THE COURT:** Is that all right with the Government?

3 **MR. TYNAN:** I believe that's fine. I mean, I think  
4 it's probably more accurate to say "was an investment advisor  
5 for Port Royal Reassurance Company to invest trust assets on  
6 behalf of North Carolina Mutual Life Insurance Company."

7 **MR. JONES:** That would be fine.

8 **THE COURT:** Okay. So -- did you get that?

9 Yes. Absolutely. Great.

10 Okay. So we'll say it that way.

11 And then I'll say: Mr. Reifler denies he was an investment  
12 advisor for Port Royal and denies he had any scheme to defraud  
13 anyone.

14 **MR. JONES:** Yes, Your Honor.

15 **THE COURT:** Yes. All right.

16 And then burden of proof, all that stuff. That's,  
17 basically, all I intend to tell them for purposes of jury  
18 selection.

19 And I will, of course, ask them if anybody knows the  
20 Defendant, the lawyers. I'll have to have your witness lists  
21 so I can be sure they don't have any -- I mean, it's okay if  
22 they actually know the person, as long as it's casual and it  
23 isn't going to affect them. We'll have to inquire if that's  
24 the case.

25 I'll ask them if they have any connection to North Carolina

1 Mutual or to Port Royal. That seems unlikely, but we certainly  
2 could have somebody who has worked for or knows somebody who's  
3 worked for North Carolina Mutual or who has heard about  
4 financial troubles that North Carolina Mutual may have  
5 experienced. I'm just looking at the questions specific to  
6 this case because I'll ask them all the usual general  
7 questions.

8 Hold on.

9 (Pause in the proceedings.)

10 **THE COURT:** All right. Now, I'll say: Several of  
11 these charges involve allegations that Mr. Reifler was  
12 defrauding or attempting to defraud a re -- an insurance  
13 company by diverting money belonging to that company. You'll  
14 hear about something called reinsurance, which, generally  
15 speaking, is -- anybody got a shorthand definition that I can  
16 tell the jury for purposes of, you know, just asking them if --  
17 I can certainly say, "Have any of you ever worked for a  
18 reinsurance company?" If they haven't, they won't know what it  
19 is. I don't have to explain it to them at this point.

20 **MR. TYNAN:** Your Honor, the Government would be  
21 satisfied -- there's -- in the background of the indictment,  
22 there's a pretty concise definition of reinsurance in  
23 paragraph 2.

24 **MR. JONES:** And the defense's preference would be that  
25 the Court not go about -- instructing the jury at this point

1 about the facts of the case.

2 **THE COURT:** I've got to tell them something about the  
3 facts or we can't figure out if they can be fair.

4 **MR. JONES:** We can tell them it's a reinsurance  
5 company, and if they don't know what that is, it's hard to  
6 imagine how they could have any issues with it.

7 **THE COURT:** Okay. Well, I'll just tell them a  
8 reinsurance company often works with insurance companies to  
9 share risk. How is that? That's pretty vague.

10 **MR. JONES:** Yes, Your Honor.

11 **MR. TYNAN:** That's fine with the Government,  
12 Your Honor.

13 **THE COURT:** Okay.

14 And I'll ask anybody if they've ever worked in insurance or  
15 reinsurance or in financial investments or as a broker or  
16 financial advisor; any feelings or experience with insurance  
17 companies, brokers, investment management, financial advisors  
18 that would prevent them from being fair, from following the  
19 law.

20 I'll ask if anybody has ever been responsible for managing  
21 the financial affairs of another person, corporation, or entity  
22 and if that experience would prevent them from following the  
23 law.

24 I'll ask if they've ever been the victim of a financial  
25 crime or any kind of fraud or embezzlement; if anyone has ever

1 defrauded them or a close family member; if you've had money  
2 stolen from you, whether it resulted in criminal charges or  
3 not.

4 One count relates to perjury.

5 I'll ask if anybody is a notary or administers oaths, just  
6 so you'll know that.

7 Have any of you, or anyone in your close family, ever been  
8 accused of making a false statement or lying under oath, or  
9 experienced a situation where someone else lied under oath to  
10 your detriment, or any feelings about perjury that would  
11 prevent you from following the law?

12 And those are the questions specific to this case that  
13 occurred to me, but I'm very happy to hear your suggestions.

14 You know, I'll ask them all the general stuff: Connections  
15 to law enforcement, Justice Department, how long the trial is,  
16 follow the law on presumption of innocence and burden of proof.  
17 I'll get them to tell us a little bit about themselves, ever  
18 been in the military. We'll go over their employment, victim  
19 of any crime. I mean, I'm going to ask them specifically about  
20 financial crimes, but I'll ask them generally about crimes.

21 **MR. JONES:** If you could include a close family member  
22 in any --

23 **THE COURT:** Right, close family member.

24 **MR. JONES:** And children.

25 **THE COURT:** Yeah, I generally ask that, uh-huh.

1           **MR. TYNAN:** Your Honor, there's one other entity that  
2 might be worth mentioning, and that's the Summit Trust Company,  
3 and that's the Trust Entity 1 which is identified in  
4 paragraph 7 of the indictment, and -- for the same reason that  
5 we mentioned Port Royal and North Carolina Mutual. Summit  
6 Trust, that name is going to come up at trial. It would  
7 probably make sense to make sure that nobody on the juror -- or  
8 potential jurors have any sort of relationship or have invested  
9 with Summit Trust or anything like that.

10           **MR. JONES:** I think that's fair.

11           There's also a publicly-traded, SEC-regulated fund involved  
12 here called Forefront Income Trust.

13           **THE COURT:** Forefront Income Trust.

14           **MR. JONES:** The shorthand for that is FIT, F-I-T.

15           And then there are also -- I mean, I expect that there are  
16 a number of Forefront entities that will also be discussed  
17 heavily, and I'm happy to provide each of those names to the  
18 Court. But, again, it seems highly unlikely to me that --

19           **THE COURT:** They're in New York, right?

20           **MR. JONES:** Yes.

21           **THE COURT:** More or less.

22           **MR. JONES:** Yeah, but they pull investments  
23 nationwide.

24           **THE COURT:** Okay. Well, if there's some general way I  
25 can do it, you know -- if I can say various financial entities

1 with the name Forefront in the title?

2 **MR. JONES:** If I could think on that, because we want  
3 to be specific about separate corporate identities and not --

4 **THE COURT:** All right. Well, think about it, confer  
5 with the Government; and if y'all have some suggested language  
6 that you agree on, you can submit it informally through email  
7 to Ms. Winchester; and I'll be glad to ask.

8 **MR. JONES:** Yes, Your Honor.

9 **MR. TYNAN:** Yes.

10 **THE COURT:** Anything else y'all can think of that you  
11 want me to ask?

12 **MR. TYNAN:** No, Your Honor.

13 **MR. JONES:** No, with the same -- if there's anything,  
14 we'll talk about it.

15 **THE COURT:** As long as y'all talk about it, confer.  
16 And, you know, I will -- as I've already said, if you get up --  
17 I'll go through it all, and if I -- I mean, I have been known  
18 to occasionally skip a question unintentionally or, you know,  
19 not follow up with a juror when, perhaps, I should. So y'all  
20 should feel free when we get up there at the bench conference  
21 to let me know that.

22 **MR. JONES:** Are the jurors currently using a  
23 questionnaire before they arrive and will --

24 **THE COURT:** Yes. It's a very -- it's a questionnaire  
25 designed mostly to disclose cause, but -- you will get those --

1 they'll get here; they'll get checked in; they'll fill out the  
2 forms. They're very basic. They, basically, just say: Can  
3 you hear? Can you see? Anybody involved in the criminal  
4 justice system in your family? Have you ever been convicted of  
5 a crime?

6 It's things that might excuse them for cause and -- but,  
7 yeah, she'll let you look at those before you come into the  
8 courtroom. You won't keep them. You won't have copies of  
9 them, but --

10 **MR. JONES:** And I assume the form would have --  
11 because I had a problem recently with out-of-district jurors.  
12 It was a non (indiscernible).

13 (Court reporter requested clarification.)

14 **MR. JONES:** There was a question in a recent jury with  
15 out-of-district jurors.

16 **THE COURT:** Well, I think there's a place for them to  
17 put their address on there, isn't there?

18 **THE COURTROOM DEPUTY:** There is. And I think usually  
19 that is taken care of before they even report.

20 **THE COURT:** Yeah, the jury clerk usually takes care of  
21 that. But, you know, obviously, point out any problems that  
22 you see; and if you want me to ask a specific question of a  
23 specific juror, you know, I'll give you an opportunity.

24 I will say that after the first round, usually I -- I say,  
25 "Do you need to approach the bench?" And a lot of times people

1 say, "No." So if there's nothing you want to ask, you don't  
2 have any challenges for cause -- there's nothing else you want  
3 me to ask and you don't have any challenges for cause, we don't  
4 have to come up to the bench. But say "yes" if there's  
5 something. Okay.

6 All right. Got that done.

7 Now, once we get a jury and we get them impaneled, I'll  
8 instruct them, the usual instructions, opening -- well, let me  
9 go back because one of the things I need to tell the jury  
10 during selection is how long the case is going to take.

11 So we're -- if we start on Monday, the 14th, and most of  
12 that day is jury selection -- maybe we'll get the opening  
13 statements done -- then we'll have four trial days. The next  
14 week Monday is a holiday, so we'll have four trial days after  
15 that.

16 My usual practice is 9:30 to 12:30 or 12:45, take about an  
17 hour and 15 minutes for lunch since Mr. Reifler is not in  
18 custody. That's usually plenty of time. Come back at 1:45 or  
19 2:00, depending on when we went to lunch, and stop by 5:00.  
20 We'll take a 15-minute break midmorning and midafternoon. It's  
21 right around six hours trial time per day, a little --  
22 sometimes it works out a little less, and -- so what's the  
23 Government thinking?

24 **MR. TYNAN:** Yes, Your Honor. Anticipating one of the  
25 things I wanted to raise today, which is that we are



1 streamlining our case, as the Court predicted last fall,  
2 significantly, so I actually think, with the understanding that  
3 we would start with witnesses on Tuesday morning -- Tuesday,  
4 Wednesday -- there is -- there is a chance, depending on the  
5 length of cross-examination and other evidentiary issues, that  
6 we could finish by Thursday. I mean -- and -- even if -- and  
7 potentially late Wednesday if -- you know, if the crosses  
8 aren't long or there aren't any issues. So we are definitely  
9 streamlining our case and can be ready probably to finish our  
10 case, at the latest, by the end of that week.

11 **THE COURT:** All right. Great.

12 What's the defense thinking?

13 **MR. JONES:** And, obviously, it's going to depend on  
14 what falls by the wayside by streamlining and how we perceive  
15 the witness' testimony and how much cross needs to be done. I  
16 don't anticipate a rebuttal case lasting more than two and a  
17 half to three days.

18 **THE COURT:** All right. So that -- great. So it  
19 sounds like we can probably get it done in two weeks.

20 **MR. JONES:** That has been our hope.

21 **THE COURT:** Yeah.

22 **MR. TYNAN:** Easily, from the Government's view.

23 **THE COURT:** All right. Good.

24 Well, that's what I'm going to tell the jury, this week and  
25 next week. Of course, I always blame it on them. I always say

1 I never know how long the jury is going to deliberate, because  
2 I don't, and, you know -- but that should not be a problem.

3 **MR. JONES:** That's right.

4 And I may just have something -- a screw loose somewhere,  
5 but for some reason, I thought that they changed the holiday  
6 structure this year so that the 21st was no longer a federal  
7 holiday.

8 **THE COURT:** Is that right?

9 **MR. JONES:** Maybe I'm just completely --

10 **THE COURT:** You know, they made Juneteenth a holiday.

11 **MR. JONES:** Right.

12 **THE COURTROOM DEPUTY:** No, it's a holiday.

13 **THE COURT:** It's still -- it's still President's Day.

14 **MR. JONES:** Yeah.

15 **THE COURT:** Okay. Well, I'm going to assume it's a  
16 holiday. I believe that it is.

17 **MR. JONES:** That's fine.

18 **THE COURT:** I don't know.

19 **MR. JONES:** This might be a good place -- we --  
20 obviously, one of our challenges is coordinating witnesses, you  
21 know, and so we were going -- I wanted to bring to the Court  
22 the possibility -- should we still be going on, we have one  
23 witness who's important, but who may not be able to make it  
24 should he have to appear on the 22nd. So the question would be  
25 if -- if we could call him out of order potentially, should we

1 need to.

2           **THE COURT:** I'm generally agreeable to that. I don't  
3 know about interrupting the Government's case, but, you know,  
4 it sounds like they're going to be finished well before that,  
5 so that ought to be okay.

6           **MR. JONES:** Yes, ma'am. I'll coordinate with  
7 Mr. Tynan and give him more details about that. I just wanted  
8 to preface that that may be --

9           **THE COURT:** It is my general practice to ask routinely  
10 throughout the trial, while we're in the Government's case when  
11 we break for lunch, "Who are your witnesses going to be this  
12 afternoon?" And when we break at the end of the day, "Who are  
13 your witnesses going to be tomorrow?" both for me and for  
14 defense counsel. And then when it's Defendant's turn, I do the  
15 same thing. But I would expect y'all to be communicating about  
16 that.

17           **MR. JONES:** Yes, Your Honor.

18           **THE COURT:** And if the Government would, as you  
19 approach finishing up, you know, give us some notice so that  
20 the Defendant can have their witness here.

21           You know, I assume I may need to hear from you at the close  
22 of all the evidence, but I would hope that we could do that at  
23 lunch or five o'clock or, you know, whatever, rather than make  
24 the jury sit around and wait.

25           **MR. JONES:** Yes, Your Honor.

1           **MR. TYNAN:** Your Honor, on witness coordination, all  
2 but two of our witnesses, I think, are from out of town; and so  
3 if we're operating under the understanding that we're most  
4 likely not going to get a witness on the stand on Monday,  
5 request the Court's permission, with, you know, the consent of  
6 the defense, to agree that we're not going to put on any  
7 witnesses until Tuesday morning just because I --

8           **THE COURT:** I don't actually see any way we can do  
9 that anyway because of the -- of how -- if it weren't a  
10 pandemic and we could pick a jury the normal way, we would be  
11 able to put a witness on on Monday, but because that -- I mean,  
12 I think I can only get 22 or 23 people in here for jury  
13 selection and --

14           **MR. JONES:** Either way, Your Honor, we're comfortable  
15 with agreeing not to start witness testimony until the 15th.

16           **THE COURT:** All right. But you may have to do your  
17 opening statements on that day.

18           **MR. TYNAN:** That's perfectly fine with the Government.

19           **THE COURT:** Okay.

20           Oh, during jury selection, public access will be by way of  
21 a remote video feed, probably in Courtroom 2, possibly in  
22 Judge Auld's courtroom, somewhere else. We will not have room  
23 in here for anybody other than us and the jurors.

24           So, you know, if you have people -- you have people who  
25 want to watch, Mr. Green, or otherwise, you know, probably

1 they're going to have to watch it remotely at least until, you  
2 know, we're kind of well into the jury selection and some space  
3 opens up. So if y'all have anybody else in your law firms who  
4 wants to come -- I don't know who you might have. But they're  
5 going to have to watch it with the rest of the public until  
6 space opens up.

7 Now, once we get the jury selected, we'll have the  
8 courtroom open. I have -- we have not had any problems so far  
9 with too many people in the public spaces. Should that become  
10 a problem, I'll ask -- we'll figure out a video feed. But I  
11 haven't had any problems with that. So we'll make the whole  
12 trial publicly available.

13 I do need a set of -- a couple of sets of paper exhibits.  
14 So the courtroom clerk requires a paper copy. The exhibit is  
15 the paper copy the clerk has. And I need an extra set of paper  
16 copies for me and my law clerk to share. The court reporter  
17 prefers a thumb drive, so you don't have to make the third  
18 paper set; okay?

19 **MR. TYNAN:** Great. Thank you.

20 **THE COURT:** Yeah. And everything should be premarked  
21 with exhibit numbers so we -- you know, we don't have any  
22 pauses to deal with that.

23 Y'all have or will be trained on the courtroom technology  
24 and all of that? All of that is in place? Okay.

25 **MR. JONES:** And just so the Court knows, our plan for

1 defense exhibits would be to premark them as best we can,  
2 recognizing then there may be gaps, depending on what evidence  
3 actually comes in.

4           **THE COURT:** I don't expect -- I'm sure that the jury  
5 would be quite happy if you did not introduce every single  
6 exhibit you had premarked, and I will glad to say that to the  
7 jury, that, you know -- I -- I'm always willing to be the bad  
8 guy because they never think I am and, you know, to tell them I  
9 made y'all premark the exhibits so there could be gaps, and  
10 they shouldn't draw any inferences from that. So if I end up  
11 needing to do that, just ask me. I'll be glad to.

12           **MR. TYNAN:** The Government, you know, certainly  
13 expects not to introduce every premarked exhibit, so just  
14 making the Court aware of that.

15           **THE COURT:** Yeah, that's usually what happens. I'll  
16 tell them that, and if I forget, y'all remind me. I don't mind  
17 being reminded.

18           Okay. If y'all are going to have any stipulations, you  
19 know, I do sometimes tell the jury that in preliminary  
20 instructions. So please -- you know, I would -- you don't have  
21 to file them before the trial, but it's a little easier if you  
22 do.

23           Now, in the preliminary instructions, once they're  
24 impaneled, you know, I'll tell them how the trial will work.  
25 I'll tell them what "sustained" and "overruled" means. I'll

1 tell them about bench conferences, what is and is not evidence,  
2 tell them about the schedule. I'll tell them about the  
3 presumption of innocence, the burden of proof, reasonable  
4 doubt.

5 Now, this is what I intend to tell them in my very general  
6 summary of the law: I will give you detailed instructions on  
7 the law at the end of the case, and those instructions will  
8 control your deliberations and decisions. But to help you  
9 follow the evidence, I will now review the basic elements of  
10 the charges against Mr. Reifler.

11 In Counts One through Four, Mr. Reifler is accused of wire  
12 fraud. To find him guilty of wire fraud, you must find that he  
13 knowingly devised a scheme or artifice to defraud the  
14 North Carolina Mutual Insurance Company, that the scheme to  
15 defraud involved a material misrepresentation or concealment of  
16 material fact, that he acted with the intent to defraud, and  
17 that in executing the scheme he transmitted or caused to be  
18 transmitted communications by wire, such as over the Internet.

19 **MR. TYNAN:** Fine with the Government, Your Honor.

20 **MR. JONES:** Your Honor, I think the piece that's  
21 missing is what a "scheme to defraud" is.

22 **THE COURT:** I appreciate that, but you know --

23 **MR. JONES:** Our position is a simple fix is to obtain,  
24 you know, money or property.

25 **THE COURT:** Yeah. You know, we appear to be all

1 uncertain about all of that. I mean, we all had massive  
2 discussion about that before. So I think this covers it  
3 generally. We'll get into that with the final instructions.

4 And I don't know how else you would defraud -- what else  
5 you would defraud somebody of besides money or property.

6 **MR. JONES:** Well, I mean, people get tricked into  
7 doing all sorts of things, you know, believe in all sorts of  
8 stuff.

9 **THE COURT:** Yeah, but fraud kind of -- I think that's  
10 inherent, but we'll talk about it at the final instructions.

11 Count One concerns an August 12th, 2016, email; Count Two  
12 concerns another email. This one on or about August 18th.  
13 Count Three is an August 23rd email and Count Four is an  
14 August 24th email.

15 Just kind of give them the dates and not really say  
16 anything else about that beyond the dates.

17 The jury will decide whether these emails were sent,  
18 whether they were part of a scheme to defraud, whether  
19 Mr. Reifler knowingly devised a scheme to defraud that he  
20 executed in part by means of these wire transmissions via  
21 email.

22 Just, you know, letting them know that's their job.

23 In Count Five, Mr. Reifler is accused of perjury. To find  
24 him guilty of perjury, the jury must find that on or about  
25 October 26th, 2016, he signed a declaration under penalty of



1 perjury subscribing to material facts as true when he knew  
2 those facts were false. It is not enough if he was mistaken or  
3 confused. The Government has to prove the statements were  
4 deliberately false.

5 **MR. JONES:** No objection to that.

6 **MR. TYNAN:** That's fine with the Government.

7 **THE COURT:** Okay. And reasonable doubt; conduct of  
8 the jury, all those rules they have to follow: don't talk  
9 about it, don't form an opinion, don't conduct independent  
10 investigation, et cetera, et cetera; housekeeping; notes. I  
11 let jurors take notes. They will leave the notes in the  
12 courtroom during the trial, but they may take them with them  
13 during deliberations. I'll give them some cautions about that.

14 That's it. You know, I'll cover all the usual stuff, which  
15 I've not covered here.

16 Any questions about those preliminary instructions?

17 **MR. TYNAN:** No, Your Honor.

18 **THE COURT:** So now I am -- oh, and -- I assume in the  
19 exhibits that -- you know, if there is personal protected  
20 information that's not necessary, you know, you can redact it  
21 from the exhibits. It's just easier in the long run. I mean,  
22 we don't put the court exhibits online, but they are publicly  
23 available. So if there is -- if it's not necessary -- you  
24 know, you can redact people's social security numbers or  
25 whatever, if there's stuff like that.

1       And I know from the trial briefs, it sounded like the  
2 Defendant was not -- it sounded like the Government was going  
3 to have to ask all the foundational questions about all the  
4 exhibits; is that right?

5           **MR. JONES:** I think they certainly can attempt to move  
6 exhibits under 902(11), so long as they do so in compliance  
7 with the rule.

8           **THE COURT:** Okay. Well, if there's -- you know, it  
9 just takes a long time to ask -- to go through with witnesses  
10 sometimes the found -- foundational questions, you know, was  
11 this created in the course of -- regular course of business,  
12 whatever; and if there really isn't any dispute about that, if  
13 we can skip it, that saves time and makes things more efficient  
14 and interesting -- or I should say less boring.

15       So, you know, if the Defendant is in a position to do that  
16 about any exhibits, you know, please let the Government know.

17       Otherwise, they certainly don't have to do that, and you'll  
18 just have to ask your questions.

19       All right. Now, I am to the issues raised in the trial  
20 briefs and the motions, and it is -- we've been in here an  
21 hour.

22       We'll talk about how long your closing arguments are going  
23 to be later when we get to that stage of the trial, but to help  
24 me plan the first day of the trial, how long does the  
25 Government anticipate needing for your opening?

1           **MR. TYNAN:** 10 to 15 minutes, Your Honor.

2           **THE COURT:** Mr. Jones?

3           **MR. JONES:** I would have anticipated 25 to 35,  
4 Your Honor.

5           **THE COURT:** Okay. So it sounds like we need maybe 45  
6 minutes, possibly, for opening. That's great. Very  
7 reasonable. If that changes, please let me know. I wouldn't  
8 think you would need any longer than 30 minutes. You know, if  
9 you can't explain it in 30 minutes -- you can practice on a  
10 fifth grader -- it's a really good test -- or a ninth grader.  
11 Jurors are very intelligent, but this is kind of complicated  
12 stuff, so you need to -- I need you to break it down, not to  
13 mention the jurors.

14           So I read the briefs on the pending motions. How about we  
15 hear -- we deal with the motion to dismiss the indictment, and  
16 then after that we'll take a short break and come back.

17           Okay. So what else does the Defendant want to say, since  
18 it's your motion?

19           **MR. JONES:** Well, thank you, Your Honor. I appreciate  
20 the Court looking into it and giving it the attention it  
21 deserves.

22           It was a real concern to us when -- after the last motions,  
23 we received the grand jury testimony of Joel Schreiber, and we  
24 think that there is a substantive difference between a witness  
25 that is subject to being impeached, which we very clearly

1 believe that Schreiber is subject to being impeached wholly and  
2 fully, and where the testimony itself has these little indicia  
3 and pieces of it which demonstrate its untrustworthiness.

4 And *Bank of Nova Scotia* sets out an analysis by which if  
5 there is grave doubt about the grand jury proceeding or it's  
6 perceived that this improper testimony casts doubt, you know,  
7 on how the process went, that that's a basis to dismiss on Joel  
8 Schreiber's testimony.

9 The motion does not argue that the Government intentionally  
10 suborned perjury. I'm not doing that here, and I want to be  
11 very clear about that.

12 But we do believe that the statements that Joel Schreiber  
13 made to the grand jury were false, and there was evidence in  
14 the record and in the other discovery which demonstrated their  
15 falsity. There were key corporate entities that he owned  
16 which --

17 **THE COURT:** So can you address the Government's  
18 arguments? I mean, I read your brief, but then I read the  
19 Government's brief, and I looked at their attachments, and it  
20 sounds like these are jury arguments that you should make.

21 **MR. JONES:** Well, so the point is Schreiber was the  
22 only civilian witness in front of the grand jury. Major pieces  
23 of this case hang on Joel Schreiber.

24 **THE COURT:** That's often the case.

25 **MR. JONES:** Yes. And so where you have a witness

1 whose testimony in front of the grand jury is so demonstrably  
2 false, that casts doubt on the grand jury process, right? It's  
3 one thing that you may be able to impeach a witness, but that  
4 can rise to the level, under *Bank of Nova Scotia*, where the  
5 entire process of the grand jury is now tainted by that  
6 improper testimony.

7           **THE COURT:** Right, but that -- that begs the question,  
8 which is what I'm asking you to address, which is -- when I  
9 read the Government's brief after reading yours and then I  
10 looked at their attachments, it -- I am questioning whether it  
11 rises to that level of demonstrably false, which is, I think,  
12 the phrase that you're relying on.

13           **MR. JONES:** Yes. And we don't think that it's a close  
14 question about whether it's demonstrably false. If you look at  
15 the corporate entities, he denied knowledge of his own  
16 corporate entities, and not only did he deny it, he denied it  
17 in contradiction of other sworn testimony saying, "Yes, that's  
18 mine."

19           So the inference that's made by that passage is, is this  
20 made up, right? Is this false information? Do you even know  
21 who this company is that purportedly is your company?

22           And he tells the grand jury, "I don't know who that is,"  
23 but he has told under oath, "That's my company." So the answer  
24 is if -- what if Joel Schreiber had told the truth? He would  
25 have told the jury, "Yes, that's my company." And that would

1 have an impact.

2 When he's asked about a number of these documents -- "Do  
3 you know who Port Royal is?" He signed the agreement with Port  
4 Royal, and he says now, "I don't know who that is"? There are  
5 emails sending him the money that he got from Port Royal, and  
6 he says, "I don't know who that is"? And it's the Government  
7 that's showing him the emails where he gets the money that says  
8 here's all this money from Port Royal, and he says, "Grand  
9 Jury, I don't know who Port Royal is." Right? And so he  
10 denied knowledge of --

11 **THE COURT:** But didn't he explain that to the grand  
12 jury, why he didn't know?

13 **MR. JONES:** His response was maybe he was in a hurry;  
14 it got switched out. It's just facially incredible given, you  
15 know, the evidence here, given his other testimony.

16 **THE COURT:** Well, I mean given, that's the problem.

17 **MR. JONES:** Yes.

18 **THE COURT:** I mean, given.

19 **MR. JONES:** Yes.

20 **THE COURT:** It requires so much context. And when I  
21 looked at the Government's response and I read their  
22 attachments, I'm like, "Well, I don't know. They could impeach  
23 him." You know, it has -- you have to show that it's  
24 demonstrably false, which I don't know exactly what that means,  
25 but -- because as far as I could tell, there have been

1 absolutely no cases where a court has actually done this, no  
2 Fourth Circuit cases certainly that I saw. Maybe I'm wrong,  
3 but -- you know, so what does it actually mean?

4 **MR. JONES:** What we --

5 **THE COURT:** There's lots of cases where people repeat  
6 the standard you're talking about, and then they say, "But this  
7 isn't one of them."

8 **MR. JONES:** What we think it means in this case is  
9 that where you have this witness and where you have the  
10 discovery that's built in this case and where you have the  
11 documents that the Government is showing to this witness that  
12 contradicts his own testimony and they don't ask that next  
13 question -- all right -- it's in those cases where you can say  
14 it's demonstrably false.

15 This was not a case that just came up, you know, out of  
16 nowhere, right? I mean, it came -- and part of the allegations  
17 of this indictment are from the civil case, right? Civil  
18 documents from that case are relevant here.

19 And so Joel Schreiber is a known entity and was a known  
20 entity, and when he gets in front of the grand jury and  
21 disclaims any knowledge of key companies that he owns, having  
22 done so in other proceedings and under oath in other  
23 proceedings, we think that that is demonstrably false and  
24 something that the Government -- maybe they didn't know about  
25 it, but they should have known about it, right?

1        This is an individual who other judges in other related  
2 proceedings have found him to be incredible, and we think his  
3 credibility is just so utterly terrible and his statements  
4 themselves against the other discovery are so demonstrably  
5 false from his own testimony that where you have him as a  
6 witness supporting this indictment there's a problem.

7        Now, could they bring this indictment to a grand jury  
8 without those false statements and get these same charges?  
9 Possibly. Very possible, right. And we would love for that  
10 process to happen. We would even give a tolling agreement for  
11 them to go try it again. Our problem is basing any indictment  
12 off of Joel Schreiber.

13            **THE COURT:** Well, you have to show prejudice.

14            **MR. JONES:** Yes.

15            **THE COURT:** So if they could get an indictment without  
16 it, then how do you show prejudice?

17            **MR. JONES:** I think they're certainly -- they're  
18 willing to try, and I'm not saying they can. But that, I  
19 think, is what the appropriate next step should be given his  
20 involvement in this indictment against Mr. Reifler. I think  
21 the appropriate resolution is the dismissal of Counts One  
22 through Four, and should they then attempt to, you know, go  
23 back and do their case without the grand jury having been so  
24 tainted, you know, we may get there.

25        But that's not what the grand jury heard, right? The



1 question is whether or not the process was so affected by the  
2 false statements to cast grave doubt. And this is not, in our  
3 estimation, an example of somebody saying a small  
4 inconsistency. These are major inconsistencies going to  
5 substantial matters in the case that were contradicted in the  
6 records themselves, not cleared up, and it gave a presentation  
7 that was false to the grand jury.

8 For that reason and given how seriously we feel about Joel  
9 Schreiber's incredulity, we think it infected the entire grand  
10 jury process, and the remedy is dismissal of those counts.

11 **THE COURT:** Okay. For the Government?

12 **MR. TYNAN:** Yes, Your Honor.

13 I believe the Government's response brief addresses each  
14 and every alleged false statement to the grand jury and shows  
15 those statements were not false. It is a gross overstatement  
16 by the defense to say that these were demonstrably false  
17 statements when their own motion cuts out the entire context  
18 for each alleged false statement that they said occurred.

19 There was no finding by a judge that Joel Schreiber was not  
20 credible. In fact, the defense's motion totally takes that  
21 quoted text completely out of context.

22 And so for these reasons, Your Honor, Joel Schreiber did  
23 not lie before the grand jury, and there's no basis to dismiss  
24 the indictment.

25 And, in fact, the grand -- there's one thing I do want to

1 clear up that, perhaps, was not explicit in the Government's  
2 response. This grand jury testimony was turned over in  
3 September. The defense filed a motion a month before trial,  
4 while they've had the discovery the entire time. So this is  
5 not a new disclosure by the Government.

6 And so for these reasons, Your Honor, the motion to dismiss  
7 should be denied.

8 (Pause in the proceedings.)

9 **THE COURT:** Okay. Well, I understand the law to be  
10 that I can exercise supervisory authority to dismiss an  
11 indictment for errors in grand jury proceedings only where  
12 there's an irregularity prejudicing the defendant, and that  
13 means the irregularity must have been of a constitutional  
14 dimension or substantially influence the decision to indict or  
15 caused grave doubt.

16 You know, so the cases do give us some understanding of  
17 what that term means, but it -- you know, it can't just be  
18 questions about -- general questions about credibility, and it  
19 looks to me like that is what we -- what we have here. The  
20 Defendant can cross-examine the witness, if he testifies, about  
21 these -- these things, and -- you know, but it doesn't look to  
22 me like it was obviously perjury. There's explanations for it  
23 that the jury will decide whether they believe them or not, but  
24 it doesn't look like there was demonstrably false or perjured  
25 or -- testimony here. So I'm going to --

1           **MR. JONES:** Yes, Your Honor. And if I could just --  
2 one -- I lighted over one point that may not affect the Court,  
3 but I didn't hit it, and I wanted to, for the sake of  
4 Mr. Reifler.

5           The thing that was important about, from our perspective,  
6 and why it wasn't just an inconsistent statement was it went to  
7 the question of where the money went, right? Where was it  
8 invested is the key question, and when the witness says -- you  
9 know, the documents say it was invested with this company and  
10 the person who owns that company said so -- under oath says,  
11 "I've never heard of it," "I don't know that company," it  
12 creates this hole that that investment was not a real  
13 investment to a company that he owned. And that's the  
14 prejudice that we see.

15           **THE COURT:** Okay.

16           Did you want to say anything about that?

17           **MR. TYNAN:** I'm not sure -- I'm not sure I quite  
18 understand the argument, frankly. I mean, the Government rests  
19 on its paper these statements were not false, and -- regardless  
20 of the alleged prejudice by the defense. If there were no  
21 false statements, then there could be no prejudice.

22           **THE COURT:** All right. Well, there's a lot of  
23 entities. It seems to me we don't have the kind of case, or  
24 even really close to the kind of case, where dismissal is  
25 appropriate, so I will deny the motion to dismiss.

1 And I think that means the motion to unseal the grand jury  
2 testimony should also be denied given that ruling. So that is  
3 also denied.

4 The motion to dismiss the indictment is at Docket 72, and  
5 the motion to unseal is at Docket 73, and the clerk will put in  
6 the minute entries that those motions are denied for reasons  
7 stated in open court.

8 Did anybody want to be heard on the motion to seal given my  
9 ruling on the motion to dismiss?

10 **MR. JONES:** No. I filed it as a motion under seal --

11 **THE COURT:** Unseal.

12 **MR. JONES:** -- as I understood that to be the correct  
13 procedure pursuant to the new civil rules.

14 **THE COURT:** Yeah, but I don't think I need to unseal  
15 it given I denied the motion to dismiss.

16 Okay. So why don't we take about a 15-minute break. When  
17 we come back, we've got a couple of motions in limine, and then  
18 I'll just roll over with y'all some of the issues raised in the  
19 trial briefs -- I had a couple of questions -- just to help me  
20 prepare and get ready.

21 I will just say, as another logistical matter, on your --  
22 at trial I really don't like bench conferences. First of all,  
23 they're cumbersome, particularly in the pandemic, and I don't  
24 like to send the jury out. It's cumbersome in a pandemic. So  
25 I hope we will be able to avoid that as much as we can.

1       When we come in in the morning at 9:30, before I bring the  
2 jury in, I will say, "Is there anything we need to take up  
3 before the jury comes in the courtroom?" When I send the jury  
4 out at the morning break, I will say, "Is there anything we  
5 need to take up before we take our break?" And when we come  
6 back, I'll say, "Is there anything we need to take up before  
7 the jury comes in?" I'll do it at lunch; I'll do it  
8 midafternoon; I'll do it at the close of the day. Now,  
9 possibly I might forget, but I don't usually forget because  
10 I've been saying it for 28 years.

11       So, you know, it gives you a chance to say, "This is going  
12 to happen in this next part and can we talk about it here?"  
13 And I can hear from you. And then when it happens, you can  
14 say, one of you, "Objection," three-word summary of what we've  
15 already talked about. You know, certainly I don't want long  
16 speaking objections in the presence of the jury. I'm pretty  
17 familiar with the Rules of Evidence, so all you have to do is  
18 say, "Objection, Rule 601," or hear -- you know, "Objection,  
19 hearsay," or "Objection, lack of foundation," you know,  
20 whatever. You don't have to give me a long song and dance  
21 about things.

22       So -- now, anything I need to hear from you about, of  
23 course, I want to, but let's try to do it while the jury is not  
24 in the courtroom so we can be efficient with their time. Is  
25 that reasonably clear?

1       Okay. And I'm assuming that there are no ongoing plea  
2 negotiations. I don't want to be involved at all. I don't  
3 care whether he pleads guilty or not guilty. But if you are  
4 having plea negotiations and something does change, I would  
5 greatly appreciate you telling me immediately because there's a  
6 lot of prep on our end, and primarily in the clerk's office, to  
7 get ready for a jury trial during the pandemic. So should  
8 anything change about that, once it's certain that it has  
9 changed, please let Ms. Winchester know so we can kind of step  
10 back. And, of course, I'm available at your convenience, but  
11 I'm happy to try your case. I'm not trying to get anybody to  
12 plead guilty. I just want to know if something is not -- if  
13 I'm not going to have a trial, or I might not have a trial.

14       All right. 15-minute recess.

15           **MR. JONES:** Yes, before we -- can I ask about water on  
16 the table? Can we bring in --

17           **THE COURT:** Yes, bring -- normally we would have a  
18 pitcher, but -- I hate to say "because of the pandemic" for the  
19 89th time -- but if you would like to bring a water bottle in,  
20 so long as it has a lid on it and you keep it closed up, you  
21 can do that.

22           **MR. JONES:** Thank you, Your Honor.

23           **THE COURT:** I'll let the jurors do the same thing.

24       15-minute recess.

25       (An afternoon recess was taken from 3:18 p.m. until

1 3:34 p.m.; all parties present.)

2 **THE COURT:** Okay. Turning to the motions in limine,  
3 the Defendants -- Defendant has filed one to prohibit the  
4 Government or its witnesses from using the phrase "Ponzi  
5 scheme," right?

6 **MR. JONES:** Yes, Your Honor.

7 **THE COURT:** Go ahead.

8 **MR. JONES:** So under the Fourth Circuit, a Ponzi  
9 scheme has a very well-defined definition. It is a scheme by  
10 which money is brought in by one set of investors, that there  
11 are no investments made with that money, and then additional  
12 investors are defrauded, and the purpose of that second  
13 defrauding is to pay off the first investors with those  
14 unlawfully gained proceeds.

15 A fraud generally is not a Ponzi scheme. Paying business  
16 assets or taking money from a fraud is not a Ponzi scheme, but  
17 a Ponzi scheme is a specific type of fraudulent scheme that has  
18 a pretty odious and stigmatizing effect on the jury. It is a  
19 bell that if rung cannot be unrung, and we don't think that the  
20 evidence demonstrates a Ponzi scheme in this case and that the  
21 Government, at least until a point where the Court thinks that  
22 they have potentially put on evidence to that point, should be  
23 allowed to do that.

24 You know, the evidence that we anticipate the Government  
25 will put on in regards to a Ponzi scheme is that after a note

1 was made to a company, that company then did normal business  
2 things, to include retiring of old debt, paying interest on its  
3 other obligations; and it is that normal business practice -- a  
4 business that's in the business of, you know, notes and  
5 lending, it goes about retiring some of its debt; and the  
6 allegations are that that is a Ponzi scheme because this  
7 company that received the note then used it to do something  
8 else, including, you know, paying off other obligations that it  
9 had. We don't think it fits, and we think it's a pretty odious  
10 thing. We can all think of classic Ponzi schemes, and this  
11 just isn't what this case is about.

12 **THE COURT:** All right.

13 For the Government?

14 **MR. TYNAN:** Yes, Your Honor.

15 The indictment specifically alleges that the Defendant used  
16 the trust assets from North Carolina Mutual to pay off prior  
17 investors; and under the definition of a Ponzi scheme in the  
18 Defendant's motion, that's exactly what a Ponzi scheme is.

19 And while the Government does not submit that this entire  
20 case -- all of the charges in the indictment are indicative of  
21 a Ponzi scheme, based on our preparation for trial, the  
22 witnesses have said, you know, this -- it seemed like a Ponzi  
23 scheme. The Defendant got money in from a new source, and he  
24 used it to pay off old debts.

25 And so while the Government is not going to overreach here



1 and say that every single aspect of this case is a Ponzi  
2 scheme, it does expect its witnesses to describe it as such;  
3 and when the witnesses describe it as such, based on their own  
4 personal knowledge, the Government is entitled to make  
5 arguments to the jury off of that testimony; and that's  
6 appropriate -- certainly appropriate under the facts of this  
7 case.

8 **MR. JONES:** That actually hits on it exactly, is that  
9 these witnesses are misusing, you know, Ponzi scheme to  
10 describe conduct that isn't. To demonstrate that it is, you  
11 would have to have one set of investors who give you money,  
12 another set of investors -- and this first set of investors  
13 intends to get their money back with profit, right? And then  
14 you take this money and pay them off for the purposes of  
15 encouraging them to invest more. It's not simply that you --

16 **THE COURT:** Or for the purpose of hiding your --

17 **MR. JONES:** That's correct. But there's no evidence  
18 that there's anything improper about this other set of  
19 investments that the Forefront company made that it then used  
20 this second investment to pay down the debt.

21 **THE COURT:** Well, lots of times in Ponzi schemes the  
22 initial investment plan is not -- there's nothing wrong with  
23 it. It's just when things start to go south that then people  
24 are like, "Okay. I've got to go find some more investors to  
25 pay off these first investors so that I don't get," you know,

1 whatever -- whatever the problem is. They've embezzled some  
2 money or things just haven't gone well and, you know, it  
3 continues on.

4 So, I mean, you don't necessarily have to have fraud when  
5 you receive the money from the first investors, do you?

6 **MR. JONES:** No. You have to pay out that money as  
7 part of the Ponzi scheme; and that's what's not being  
8 demonstrated here, is that there was anything wrong with the  
9 notes that the company held, or that when it received its own  
10 note and runs its own business, its payment of these debts is  
11 part of a scheme to defraud anybody.

12 **THE COURT:** Well, I mean, isn't that the question?  
13 How can I -- that's like deciding now that the Government's  
14 evidence is insufficient.

15 **MR. JONES:** Right. And what we're saying is we  
16 believe that that term is prejudicial. To refer to something  
17 that we believe it's not is inappropriate, and they shouldn't  
18 be allowed to call it that or call it that in opening  
19 statements, and if -- you know, it's a problem with prejudicing  
20 the jury by using phrases that don't apply to it.

21 **THE COURT:** But they have alleged it in the  
22 indictment.

23 **MR. JONES:** So I think it's one thing to say that  
24 investments were paid off. It's another thing to call that a  
25 Ponzi scheme. I don't dispute what their allegations are, and

1 I think that they can -- you know, I understand what their  
2 evidence is going to be, but to call that a Ponzi scheme is  
3 different.

4 **THE COURT:** Okay. Well, I'm sure that they're not  
5 going to offer personal opinions. They're going to say, "The  
6 Government contends it's a Ponzi scheme," or something like  
7 that.

8 **MR. JONES:** So the problem is we then have to educate  
9 the jury about what a Ponzi scheme is and how this is not a  
10 Ponzi scheme.

11 **THE COURT:** Well, what's wrong with that? I mean, if  
12 you say it isn't a Ponzi scheme and they say it is, that's what  
13 trials are for, right?

14 I mean, I'm just trying to understand how I can decide this  
15 now. It's like precluding them from offering evidence that  
16 they need to prove their case because they haven't yet offered  
17 evidence to prove their case.

18 **MR. JONES:** It's the characterization of the scheme to  
19 defraud as a Ponzi scheme we have the problem with. It's the  
20 use of that word.

21 **THE COURT:** That phrase.

22 **MR. JONES:** That's correct. And it's because of  
23 the -- we think that it's subject to misinterpretation by the  
24 jury, and we think it's subject to confusion and distraction by  
25 the jury. We don't have any problem with using the words of

1 the statute, a scheme to fraud. It's the use of that one  
2 phrase, calling this a Ponzi scheme, that we've objected to.

3 **THE COURT:** All right.

4 Did you want to say something else, Mr. Tynan?

5 **MR. TYNAN:** Just on the last point.

6 You know, we cited some case law in the response that Ponzi  
7 scheme is a generally known concept to, you know, the general  
8 population, and it carries a certain accepted definition that  
9 witnesses who have the personal knowledge as to what happened  
10 in this case can say that it's a Ponzi scheme, and it reflected  
11 their understanding of a Ponzi scheme. The defense will,  
12 obviously, vigorously cross-examine that witness on their  
13 personal knowledge as to both of those things, and that's  
14 totally fair game.

15 **THE COURT:** All right. Well, I'm going to deny it as  
16 to the opening statement, and as to -- I'm just not going to  
17 prohibit witnesses from using it. If a question is unclear  
18 or -- you know, the Defendant can object at trial. If the  
19 witness uses it in an unclear way, the defense can follow up on  
20 cross-examination. I think there's ways to deal with this  
21 other than prohibiting the use of the word. Of course, if  
22 we -- you know, every time I turn around somebody is using it  
23 and not backing it up, we'll talk.

24 Mr. Jones, you can object again.

25 But I'm assuming that's not going to happen.

1 Now, the Government has filed a motion to preclude the  
2 Defendant from blaming the victim. I'm using the shorthand in  
3 the Government's words. So I was not -- y'all may have to  
4 educate me a little bit on this one.

5 You know, when I read the briefs, the Defendant seems to be  
6 correct that the interactions between the Defendant and  
7 North Carolina Mutual, if any, and Port Royal are relevant.  
8 So, you know, we can't keep those out. And, you know, you  
9 can't, I don't think, blame the victim and say, "Well, you were  
10 negligent. You should have caught it." I mean, I think the  
11 Government is right about that point.

12 But it's hard for me to figure out exactly how to deal with  
13 this generically, and it seems like it might better be deferred  
14 for trial.

15 But if anybody disagrees with those two general things that  
16 I just said -- you know, the interactions between Mr. Reifler  
17 and the -- the victim, whose North Carolina Mutual and Port  
18 Royal and its -- its managers or employees or owners, whoever  
19 he was dealing with, you know, those are relevant, and yet --  
20 and so that's going to come in. But I don't think the  
21 Defendant can say, "Well, this is North Carolina Mutual's  
22 fault."

23 If anybody disagrees with those two points, I certainly  
24 want to hear from you; and if you want to be heard further, I'm  
25 glad to think this through with you. But I'm thinking -- you

1 know, I think maybe we might need to defer this to the  
2 specifics and see how it comes up at trial.

3 It's the Government's motion. What would y'all like to  
4 say?

5 **MR. TYNAN:** Your Honor, the Government agrees with how  
6 you characterized the issues; and it's fine with the Court's  
7 understanding as to how the evidence is going to come in and  
8 sort of the boundaries, that defense can't point the finger at  
9 the victim to blame for what had happened to him.

10 **THE COURT:** So the victim is North Carolina Mutual --

11 **MR. TYNAN:** Yes, Your Honor.

12 **THE COURT:** -- that's who you are --

13 **MR. TYNAN:** Yes.

14 **THE COURT:** Many of the interactions were with this  
15 Port Royal group, right?

16 **MR. TYNAN:** Yes, Your Honor. My understanding is --  
17 and we'll also have a witness from Summit Trust who held the  
18 trust assets for the benefit of the life insurance company, and  
19 so they're on similar planes in the sense that they're holding  
20 the money for the benefit of North Carolina Mutual.

21 And the purpose of the Government's motion was to say we're  
22 going to object if the defense argues to the jury that it was  
23 all their fault; they should have done a better job of doing X,  
24 Y, Z.

25 **THE COURT:** North Carolina Mutual or Summit or Port

1 Royal?

2 **MR. TYNAN:** Correct, Your Honor.

3 **THE COURT:** All of them?

4 **MR. TYNAN:** Well, specifically North Carolina Mutual  
5 and Summit Trust.

6 **THE COURT:** Okay.

7 **MR. TYNAN:** And the defense's response to our motion  
8 was, you know, well, that excludes a whole category of  
9 evidence. That's not what the Government is saying. The  
10 Government does not dispute that interactions between the  
11 Defendant, Summit Trust, and North Carolina Mutual are  
12 relevant, and we plan to put on evidence regarding those  
13 interactions.

14 **THE COURT:** All right.

15 **MR. JONES:** I'd agree. And I think as part of that  
16 interaction, promises as part of contracts made between the  
17 parties about the trust money, you know, and obligations that  
18 they promised to do in relation to it fall into that category.

19 **THE COURT:** All right. Well, if anybody thinks we  
20 have a question or an answer at trial that constitutes blaming  
21 the victim, you know, just object, and I'll rule on that at  
22 trial.

23 So those are the motions in limine.

24 **MR. JONES:** There was one other, Your Honor, that I  
25 think I briefly raised in the trial brief, and it's more of a

1 motion in limine, which was -- and I don't know if this was  
2 even contemplated. But any sort of questioning or eliciting  
3 questioning regarding the ownership interest or demographics of  
4 policyholders of North Carolina Mutual we think would be  
5 highly prejudicial to justice and to Mr. Reifler.

6 **THE COURT:** Are you just saying some reference to the  
7 fact that it was the first --

8 **MR. JONES:** Yeah.

9 **THE COURT:** -- insurance company owned by Black people  
10 in the country? I don't actually know that that's true, but I  
11 know North Carolina Mutual has a long history of --

12 **MR. JONES:** Yeah, we don't see any relevance  
13 whatsoever to that history or to that type of information about  
14 the company, and we think it can only work to prejudice.

15 **MR. TYNAN:** Your Honor, there's a fine line between  
16 arguing that the Defendant did whatever he did that's alleged  
17 in the indictment based on, you know, racial motives and having  
18 a witness on the witness stand, you know, tell us about  
19 North Carolina Mutual. Well, North Carolina Mutual is the  
20 oldest, you know, African American-owned life insurance company  
21 in the country.

22 **THE COURT:** I don't know that it is. I just --

23 **MR. TYNAN:** Well --

24 **THE COURT:** But I know it has some sort of history  
25 like that.



1           **MR. TYNAN:** And we plan to elicit that testimony.  
2 It's perfectly acceptable for a representative testifying on  
3 behalf of a victim to explain what the company is. Otherwise,  
4 the jury is just left with no understanding whatsoever as to  
5 who the life insurance company is. To be clear, the Government  
6 is not injecting any sort of racial motive or bias or anything  
7 like that into the trial, but I think it's perfectly acceptable  
8 for a witness to explain what type of company North Carolina  
9 Mutual is.

10           **THE COURT:** You're talking about something that is,  
11 perhaps, a little more than a passing reference, but not much  
12 more.

13           **MR. TYNAN:** Correct.

14           **THE COURT:** Okay.

15           **MR. JONES:** And we just don't see -- you know, if you  
16 want to say when the company started or that it's in the life  
17 insurance business, that's fine -- right -- but to say who --  
18 the ethnicity of the original owners and who some of their  
19 clients were and what role it may have played in --

20           **THE COURT:** Okay. Well, if at any point you think  
21 they've gone too far, you just object. You know, I think  
22 they're entitled to ask a few questions about who the insurance  
23 company is and its history, and if it starts taking too much  
24 time, we hit Rule 403 and, you know, it goes out. I mean, it  
25 has some relevance. It just doesn't need to take a lot of time

1 because I tend to agree with you that if it's more than, you  
2 know, a little, it's not going to be real helpful to the jury.

3 **MR. JONES:** The problem is the difference between who  
4 it was in 1889 has no bearing on the company during the point  
5 of this -- you know, this offense. That's the problem, is it's  
6 attempting to color who the victim is with information, you  
7 know, from 130 years ago.

8 **THE COURT:** It's very common for people -- for victims  
9 to tell a little about themselves, and there is no problem with  
10 that. So I'm going to let them do that, and if at any point  
11 you think they've gone too far, then you can say so. I don't  
12 have any problem with them saying in passing something about  
13 its founding, but, you know, once we get to the paragraph  
14 level, there's -- I'm going to be telling them to move on,  
15 probably past the sentence level. A little background, there's  
16 no -- no problem with that.

17 Okay. I looked at y'all's proposed jury instructions.  
18 Obviously, we will be resolving those later at the close of the  
19 evidence.

20 The perjury instructions y'all submitted both talked about  
21 declarations, testimony, depositions, and certificates. But  
22 we're just talking about a declaration, right? So that's all I  
23 really need to talk about.

24 **MR. TYNAN:** Yes, Your Honor.

25 **THE COURT:** Okay.

1       And I know y'all didn't submit any joint instructions, but  
2 a lot of what y'all submitted didn't actually appear to be all  
3 that different. Certainly, there were some differences, but --  
4 and then there was an -- the Defendant, I know, put an aiding  
5 and abetting instruction in.

6       Did the Government?

7               **MR. TYNAN:** Yes, Your Honor, there is an aiding and  
8 abetting as well.

9               **THE COURT:** And how -- can you just give me a general  
10 idea of how that could -- I'm not doubting you; I just don't  
11 understand because I haven't heard the evidence -- but how that  
12 might be relevant here?

13               **MR. TYNAN:** Sure, Your Honor. For counts -- for the  
14 wire fraud counts, Counts One through Four, the indictment does  
15 allege 18 U.S.C. Section 2.

16               **THE COURT:** Yes.

17               **MR. TYNAN:** And to the extent the defense argues that  
18 it wasn't the Defendant who pressed the button on the email,  
19 the Government would be entitled to argue that he does not  
20 literally have to press the button to send the email and could  
21 have caused the -- the wire in conjunction with others at the  
22 time.

23               **THE COURT:** Okay. I think I took the statutory  
24 language "caused to be transmitted" to -- to cover things like  
25 "I told my assistant to do something" -- that would -- "to

1 transmit it." Then I have caused it to be transmitted, and you  
2 don't need aiding and abetting.

3 Is this wrong?

4 **MR. TYNAN:** That's not wrong, Your Honor, but I also  
5 think it could go beyond just the pressing of the button for  
6 the wire transmission. It could also be preparation of a  
7 document, for example. While maybe the Defendant was not the  
8 one who put the documents together, he could have -- and I'm  
9 using this hypothetically. But he could have directed somebody  
10 under his control to do so, and that certainly falls within the  
11 aiding and abetting.

12 **THE COURT:** Aiding and abetting which --

13 **MR. TYNAN:** Aiding and abetting in the furtherance of  
14 the scheme.

15 **MR. JONES:** I think the Court put its finger on it.  
16 We don't understand who it's alleged that he aided and abetted,  
17 unless it's alleged he aided and abetted the person identified  
18 in those counts.

19 **THE COURT:** Right. I mean, I guess -- I mean -- you  
20 know, in a robbery case -- it got Mr. Green's attention. Oh, I  
21 know about robbery cases. He looked up.

22 In a robbery case, you aid and abet the robber. Here who  
23 was -- I'm just struggling with this one a little bit.

24 **MR. TYNAN:** Yes, Your Honor. I mean, the instruction  
25 that the Government proposed -- and its page 10 of its proposed

1 instructions -- for example, says: It is possible to prove the  
2 defendant guilty of a crime even without evidence that the  
3 defendant personally performed every act charged.

4 **THE COURT:** Right.

5 **MR. TYNAN:** And so --

6 **THE COURT:** But he personally has to devise the scheme  
7 or artifice to defraud.

8 **MR. TYNAN:** Correct.

9 **THE COURT:** And he personally has to have the intent  
10 to defraud, and you're saying maybe somebody else made the  
11 material misrepresentation or concealed the fact or -- the  
12 material fact or --

13 **MR. TYNAN:** Correct.

14 And in the next paragraph in the proposed instructions, it  
15 says: "Ordinarily, any act a person can do may be done by  
16 directing another person or agent."

17 **THE COURT:** Right.

18 **MR. TYNAN:** "Or it may be done by acting with or under  
19 the direction of others."

20 And so that doesn't --

21 **THE COURT:** But I mean, I guess -- I mean -- okay.  
22 Well, I don't know. I'll have to hear the evidence on that.  
23 I'm just trying to -- I'm just struggling with that a little  
24 bit because if you aid and abet someone, it means somebody else  
25 is guilty with you.

1           **MR. TYNAN:** So, Your Honor, I would agree that would  
2 make sense to defer determination of the aiding and abetting  
3 instruction until after the evidence comes in, and I think, you  
4 know, depending on the lines of cross and argument that the  
5 Defendant makes, it may or may not be relevant.

6           **THE COURT:** Okay.

7           **MR. TYNAN:** So the Government is fine with deferring  
8 that.

9           **THE COURT:** Well, right, we're going to defer. I just  
10 was trying to understand it a little bit.

11           **MR. JONES:** We also have been trying to figure out who  
12 it's alleged that was a principal that was aided and abetted by  
13 Brad Reifler or who aided and abetted him as Brad, as the  
14 principal, so --

15           **THE COURT:** I mean, it --

16           **MR. JONES:** There's not a conspiracy charge here.

17           **THE COURT:** Right. But the scheme to defraud -- I  
18 think the Government is correct that the -- the Defendant does  
19 not necessarily have to be the one who made the material  
20 misrepresentation or concealed the material fact, or whatever  
21 the third one is, so long as he, you know, was responsible for  
22 it.

23           **MR. TYNAN:** Correct.

24           **THE COURT:** Yes.

25           **MR. TYNAN:** Yes. That's all the Government is getting

1 at with the instruction.

2 **THE COURT:** Okay. Do you disagree with that? If you  
3 do disagree with that, you -- y'all need to have some, like,  
4 cases, right?

5 **MR. JONES:** Yes, Your Honor.

6 **THE COURT:** Yes. Okay.

7 **MR. JONES:** I mean, we think that our aiding and  
8 abetting instruction, you know, clears up the different  
9 liability, either principal or aiding and abetting.

10 **THE COURT:** Well, we'll figure that out when it comes  
11 to the charge conference. I didn't really have any other  
12 questions about the jury instructions at this point. It's too  
13 early.

14 **MR. TYNAN:** Your Honor.

15 **THE COURT:** Yes.

16 **MR. TYNAN:** Before we move off of the jury  
17 instructions, there was one instruction that the Government  
18 wanted to identify from the Defendant's proposed list, and that  
19 was the statute of limitations instruction.

20 **THE COURT:** Hold on.

21 **MR. TYNAN:** And I believe it's --

22 **THE COURT:** My screen is too far away. I'm having  
23 some problems here. Okay. Defendant's proposed instructions.

24 **MR. TYNAN:** That's page 15 --

25 **THE COURT:** Page 15?

1           **MR. TYNAN:** -- of the Defendant's proposed  
2 instructions.

3           **THE COURT:** Okay.

4           **MR. TYNAN:** The Government is just somewhat confused  
5 as to why the jury would be instructed on, essentially, a legal  
6 issue that was raised in the pretrial Rule 12 motions,  
7 essentially saying that the Government hasn't alleged a scheme  
8 or artifice to defraud within the statute of limitations; and  
9 based on the allegations in the indictment, the Court ruled  
10 that -- you denied that motion.

11           **THE COURT:** Right. But you do have to prove it.

12           **MR. TYNAN:** Correct. That's true. That's true. We,  
13 obviously, have to prove the allegations in the indictment. I  
14 guess I just don't understand how the jury -- it's incredibly  
15 confusing for the jury to receive this instruction.

16           **THE COURT:** Juries decide statute of limitation issues  
17 all the time. I mean, it's more common in civil cases.

18           **MR. TYNAN:** In civil cases.

19           **THE COURT:** But in -- it's a -- if there is a question  
20 of fact, then the jury would have to decide it. I could not  
21 decide it.

22           **MR. TYNAN:** That's correct, Your Honor.

23           All I'm saying is that the instruction for wire fraud says  
24 that the wire that is sent must be in furtherance of the scheme  
25 to defraud, and that -- that is the decision for the jury to



1 make on a factual matter, and the wire itself was -- was sent  
2 within the statute of limitations. So it seems just somewhat  
3 redundant to instruct them on both.

4 **THE COURT:** Right.

5 **MR. TYNAN:** It raises an element of confusion, I  
6 think.

7 **THE COURT:** Well, whether it's necessary or not, I  
8 mean, that's another question because all four dates on the  
9 wire frauds, they were within the five years.

10 **MR. TYNAN:** Correct.

11 **THE COURT:** Right.

12 **MR. TYNAN:** Correct.

13 **THE COURT:** I mean, that's your underlying point.

14 **MR. TYNAN:** Correct.

15 **THE COURT:** And to find the Defendant guilty, you're  
16 saying it would have to be within the statute of limitations --

17 **MR. TYNAN:** Correct.

18 **THE COURT:** -- if they find that email was in  
19 furtherance of.

20 **MR. TYNAN:** Exactly.

21 **THE COURT:** Okay. I see what you're saying.

22 **MR. JONES:** And it's to be proved. But the Court will  
23 recall at the last motions hearing the Government identified  
24 what it called five buckets, you know, of possible  
25 misrepresentations, and several of those buckets occurred, you

1 know, now beyond the statute of limitations. So if the jury  
2 were to, you know, believe some of the evidence and not this --  
3 you know, not all of it, depending on what they find, there may  
4 be a statute of limitations problem.

5 **THE COURT:** Well, we'll have to work through that. It  
6 may be, to the extent an issue like that comes up, I don't have  
7 to word it in terms of the statute of limitations. It can be  
8 better dealt with in the elements or clarifying it in the  
9 instructions about a particular count.

10 Thank you for drawing that to my attention. I'll be  
11 attentive to that.

12 **MR. TYNAN:** Yes, Your Honor.

13 **THE COURT:** Okay. Now, that then takes me -- takes me  
14 to the trial briefs, and I do appreciate y'all highlighting and  
15 telling me what you expect some of the evidence issues are.

16 Has the Defendant disclosed the required information about  
17 their expert?

18 **MR. JONES:** Some. We have turned over  
19 Mr. Nordlander's qualifications. We intend to turn over a  
20 summary of his testimony tomorrow.

21 I'll tell the Court a part of the reason is that his  
22 testimony is in response to the Government's sort of analysis  
23 of where they see money going, and we first learned about that  
24 on the 24th or 25th through the production of some exhibits  
25 that were proposed demonstrative or illustrative exhibits. So

1 his testimony is going to be responding to sort of how -- you  
2 know, to that evidence.

3 And so we're working as quickly as we can. Mr. Nordlander  
4 is working quickly. We've turned over his qualifications and  
5 expect to have his summary to them tomorrow.

6 **THE COURT:** Okay. But you've had the evidence, you or  
7 your predecessor -- I guess your cocounsel have been -- I don't  
8 know about them individually, but their firm has been involved  
9 in this for years and has known about the -- I mean, there's  
10 been discovery about the flow of the money, right? You've had  
11 that underlying information for quite some time.

12 **MR. JONES:** Yes.

13 **THE COURT:** Yes. Okay. All right.

14 Well, whatever the rules are about that, which I haven't  
15 looked up, but I'll be prepared.

16 Yes.

17 **MR. TYNAN:** Your Honor, the Government is objecting to  
18 the proposed testimony at this point in time. I mean, this is  
19 not -- we have the right to put on a rebuttal case, and, you  
20 know, if we get a report or summary tomorrow afternoon -- I  
21 have no idea -- I shouldn't say I have no idea, but I really  
22 don't have a firm grasp on what this testimony is going to be,  
23 and it needs to be prepared to rebut the Defendant's expert.  
24 I'm not quite sure how we do that in, you know, essentially, a  
25 week -- nine days out from trial.

1           **THE COURT:** I'm not following exactly what you're  
2 saying. I apologize. You're -- back up a step and start over  
3 again.

4           **MR. TYNAN:** Yes. We're objecting to the Defendant's  
5 expert at this point due to lack of notice of the proposed  
6 testimony. Rule 16 requires that, upon request, the Defendant  
7 turn over a summary of the proposed testimony and the basis for  
8 the proposed testimony.

9           And, you know, we had this conversation with counsel for  
10 the defense. I believe it was January 12th. And we're  
11 still -- we still don't know what this testimony is going to  
12 look like, and Rule 16 specifically tries to avoid exactly this  
13 situation, which is unfair surprise at trial.

14           Your Honor, I also understand that the defense may call a  
15 handwriting expert, and we don't --

16           **THE COURT:** Hold on.

17           **MR. TYNAN:** Sure.

18           **THE COURT:** So I'm looking at 16(b), and it at least  
19 at first glance does not have any time requirements in it,  
20 right?

21           **MR. TYNAN:** So --

22           **THE COURT:** (b)(1)(C) is specific about experts.

23           Is there a timing --

24           **MR. TYNAN:** Well, not specifically, Your Honor, but if  
25 you look at the Advisory Committee note, it says: Rule 16

1 (b)(1)(C) is, quote, intended to minimize surprise that often  
2 results from unexpected expert testimony, reduce the need for  
3 continuances, and to provide the opponent with a fair  
4 opportunity to test the merits of the expert's testimony  
5 through focused cross-examination.

6 And at this point my understanding is that this testimony  
7 is going to be opinion testimony.

8 **THE COURT:** Is going to be what?

9 **MR. TYNAN:** Opinion testimony.

10 **THE COURT:** Yes.

11 **MR. TYNAN:** And the Government has the right to  
12 vigorously cross-examine that expert and test those conclusions  
13 and potentially, you know, move to exclude it, that he's not  
14 qualified to offer these opinions.

15 **THE COURT:** Exactly. I mean, the Defendant should  
16 turn this over as soon as possible because every day that it's  
17 not turned over increases the risk that just what you say will  
18 happen. Of course, if it's a report that only talks about, you  
19 know, a little tiny thing, then it might not be a problem at  
20 all. But I appreciate what you're saying. So every day the  
21 Defendant doesn't turn it over is a risk, right?

22 **MR. JONES:** That's exactly right. You know -- and for  
23 us, part of the context is there's an incredible amount of  
24 financial data in this case that the Government isn't intending  
25 to call any expert to talk about but instead a lay witness to

1 talk about it. But he's doing calculations from that math -- I  
2 mean, from all that data and saying, "These records show the  
3 following calculations in these amounts," and our expert is, in  
4 large part, responding, you know, to that.

5 **THE COURT:** Well, isn't that just math?

6 **MR. TYNAN:** Yes, Your Honor, it's a summary witness.  
7 And if the defense expert is going to get on the stand and  
8 opine that whatever our expert or summary witness has said is  
9 wrong or miscalculated and we're in the middle of trial --

10 **THE COURT:** Right, you're entitled -- that says you  
11 have to know in advance, so --

12 **MR. TYNAN:** And that's not the only expert the defense  
13 intends to call based on their trial brief.

14 **THE COURT:** I don't know what else I can do at this  
15 point. I can't -- there's no time limits in the rule, and  
16 unless and until they either call an expert without giving you  
17 anything, I'm not -- or never give you one and it's the first  
18 day of trial -- but, you know, if it's just a -- fairly short  
19 opinion testimony, I -- you know, it may not be a big deal, but  
20 if it is very, very -- a very, very big thing, then exactly  
21 what you say may apply. I'll have to look at the case law on  
22 that, which I will do.

23 **MR. TYNAN:** I understand, Your Honor.

24 **THE COURT:** Yeah. So I'll be prepared to deal with  
25 the timing issue, but I'm not seeing a timing requirement in

1 there. I suppose I can impose one.

2 **MR. TYNAN:** Your Honor, the Government understands the  
3 Court's view on this and is merely just informing the Court.

4 **THE COURT:** Right.

5 **MR. TYNAN:** To the extent we get a voluminous expert  
6 opinion tomorrow --

7 **THE COURT:** Right.

8 **MR. TYNAN:** -- or one that is insufficient to give us  
9 notice as to what the testimony is going to be, we do plan to  
10 exclude the testimony at trial.

11 **THE COURT:** All right. Well, I'll deal with that when  
12 it happens, and the Defendant is on notice.

13 And, Ms. Manning, if you can make a note that we might need  
14 to look at the case law on Rule 16(b)(1)(C).

15 Okay. You're -- the Government is going to -- normally the  
16 Government has one person who stays in the courtroom for the  
17 entire trial. Is that going to be Agent Towers?

18 **MR. TYNAN:** Yes, Your Honor.

19 **THE COURT:** And he's a witness maybe?

20 **MR. TYNAN:** He might be a witness. Depending on how  
21 the evidence comes in.

22 **THE COURT:** I think you're entitled to have one person  
23 be in here the entire time, even if that person is a witness.

24 Does the Defendant disagree?

25 **MR. JONES:** I do not, Your Honor.

1           **THE COURT:** All right. So you can do that.

2           About the witness lists -- you know, when I tell the jury  
3 about the witness list, I usually don't tell them whose  
4 witness. I just say, "Here are the possible witnesses," and I  
5 don't say that the Government might call or the Defendant might  
6 call because a lot of times you have the same people on your  
7 list and -- you know, so I'm not going to be identifying  
8 witnesses by party.

9           And you're talking -- the Government is concerned about  
10 closing arguments, so, you know, we'll talk about that -- I  
11 appreciate you bringing that to my attention. We'll talk about  
12 it then.

13           **MR. TYNAN:** Yes, Your Honor.

14           **THE COURT:** Of course, if we have any issues come up  
15 with interviews or statements, I'll be ready on that.

16           It looked like the Government was correct that there was no  
17 need for a jury issue on the amount of any forfeiture judgment.

18           Does the Defendant agree with that?

19           **MR. JONES:** I don't know the answer, Your Honor.

20           **THE COURT:** Okay. You'll be prepared?

21           **MR. JONES:** I will be prepared to discuss that. I  
22 have always had jury trials on those, or at least been given  
23 the opportunity to waive it, but I've never -- let me take a  
24 step back. I'll be prepared to make an argument one way or the  
25 other.



1           **THE COURT:** All right. When we get to the close of  
2 the evidence after any motions and assuming that they are  
3 denied in whole or in part -- yeah -- the first thing I like to  
4 do is the verdict sheet because that drives the instructions.  
5 Then after -- in this case, the verdict sheet should be pretty  
6 simple. And then after that, we'll do, you know, the law. So  
7 the verdict sheet is actually the first -- you need to be ready  
8 first thing on the verdict sheet, and I -- it's my typical  
9 practice to have drafts for everybody so we're not working from  
10 scratch.

11           And I appreciated the Government's argument about the rule  
12 of completeness. I'm going to have to take a look at that.

13           What do you anticipate, Mr. Jones?

14           **MR. JONES:** Well, it was the word "agent" that they  
15 tossed in there that was causing me concern. We don't quite  
16 understand who they are saying is an agent of Mr. Reifler for  
17 purposes of statements against Mr. Reifler, and so we certainly  
18 think that there -- it would be wholly unfair, you know, in a  
19 situation where there's thousands and thousands of emails  
20 talking about a subject matter to pluck out, you know, a couple  
21 and then not allow them to be put in context with the witness  
22 who is identifying them.

23           **THE COURT:** All right. Well, I think I may just --  
24 I'll have to deal with that individually because sometimes  
25 it -- well, as we just discussed with Mr. Schreiber, you know,

1 context matters sometimes. So if that's what we're talking  
2 about, you know, you'll be allowed to do it, but if -- we'll  
3 have to see because apparently there are definitely some limits  
4 on it.

5 **MR. JONES:** There are. We don't know who the  
6 Government -- since there's no conspiracy count here --

7 **THE COURT:** Well, your agent is, you know -- I mean,  
8 it could be fairly simple. It could be your assistant, right?

9 **MR. JONES:** It could be in this case the reinsurance  
10 company's CEO. It could also potentially be the CEO of the  
11 victim.

12 **THE COURT:** Let's see. Where is this in your -- oh,  
13 there it is.

14 **MR. TYNAN:** And, Your Honor, to potentially shortcut  
15 this, we'd be glad to lay the foundation, obviously, for  
16 whatever statement that we plan to introduce. So it will be  
17 clear at the time of the testimony whose statement it is that  
18 we're trying to introduce; and to the extent the defense  
19 objects to the foundation we've laid, then that's an objection  
20 for the Court to decide.

21 **THE COURT:** Okay. Because it's not admissible as -- I  
22 know the word "admission" is not there anymore, but it's still  
23 good shorthand. It wouldn't be an admission if they weren't  
24 his agent, right?

25 **MR. TYNAN:** Correct.

1           **THE COURT:** Yeah.

2           And then -- I wasn't sure, Mr. Jones -- in your trial  
3 brief, you talked about evidence that the owner of Port Royal  
4 knowingly approved these investments. And so does that mean he  
5 was in on the fraud? I mean, what are you saying about that?

6           **MR. JONES:** I think that's a great question for the  
7 jury, Your Honor. I think it goes to whether or not my client  
8 had specific intent to defraud, and I think it goes to whether  
9 the Government carries their burden.

10          **THE COURT:** I don't really understand because, I  
11 mean --

12          **MR. JONES:** So the -- briefly, if I could, I think I  
13 can set it up. Port Royal is the reinsurance company, and it  
14 buys a portfolio of assets from another reinsurance called  
15 Markel, M-a-r-k-e-l, and that money that's in then gets  
16 invested. It gets taken out of the trust account, and it goes  
17 to different investments. It goes to whether there was a fraud  
18 at all by Mr. Reifler whether or not Port Royal knew that the  
19 money was going out to those investments.

20          **THE COURT:** Okay.

21          **MR. TYNAN:** Yeah, the Government agrees that this is  
22 going to be an issue at trial.

23          **THE COURT:** All right. Okay.

24          We talked about the experts.

25          It looks like I need to brush up on Rule 902(11).

1           **MR. TYNAN:** Your Honor, if I could speak to that  
2 briefly?

3           **THE COURT:** Yes.

4           **MR. TYNAN:** Just so the Court understands what the  
5 Government plans to do and it's clear for everyone at trial, I  
6 mean, there are financial records for which we've provided  
7 902(11) notices. The Government's position is that those are  
8 generally not controversial documents to admit and plans to  
9 admit them based on those 902(11) notices.

10           There is an entirely separate category of predominantly  
11 emails, and the Government's proposed order of proof right now  
12 is that there will be a witness on the stand who will be able  
13 to identify the email address in the email, as well as  
14 generally testify that they're familiar with the document. And  
15 the Government is prepared to offer those emails based on that  
16 foundation, and that's how it's been proceeding.

17           **THE COURT:** In bulk you mean?

18           **MR. TYNAN:** Not in bulk, Your Honor.

19           **THE COURT:** Okay.

20           **MR. TYNAN:** There will be a witness on the stand to  
21 talk about the email that the Government is offering to them.

22           **THE COURT:** Okay. All right.

23           Well, if the Defendant thinks it's -- if the Defendant is  
24 going to object to these 902(11) exhibits, you know, please  
25 tell the Government.

1 And, you know, if the Government would tell the Defendant  
2 when you intend to offer them so that we can take it up outside  
3 the jury's presence.

4 **MR. TYNAN:** Your Honor, the Government believes we  
5 could do this on the first day of trial before we even get to a  
6 witness and just admit them.

7 **THE COURT:** Okay.

8 **MR. TYNAN:** That's what we were anticipating.

9 **THE COURT:** Great. Well, if there's -- maybe we'll  
10 have to come in early on Tuesday morning if this still isn't  
11 clear and do it at nine o'clock.

12 **MR. TYNAN:** That's fine with the Government.

13 **THE COURT:** Because, I mean, there's no reason to make  
14 the jury wait on us. So the Defendant is going to have to fish  
15 or cut bait on their objections at some point.

16 **MR. JONES:** That's fine.

17 And to be clear, our position was when the Government seeks  
18 to offer its evidence is the time for the Defendant to object  
19 to it.

20 **THE COURT:** Okay. Well, I'm not going to make the  
21 jury sit here and listen -- you know, come in, they offer it,  
22 and then I have to excuse them while we argue about it. So if  
23 you're going to object, you know, you're going to need to do it  
24 so that I can handle that outside the presence of the jury.

25 **MR. JONES:** Yes, Your Honor.

1           **THE COURT:** And if the Government is going to do it  
2 first and on Monday you're not willing to say, then we're going  
3 to come in early on Tuesday and do it at nine o'clock.

4           **MR. JONES:** Yes, Your Honor.

5           **THE COURT:** Okay. Because I'm not going to waste the  
6 jury's time -- trial time doing that.

7           All right. Everything else I think we just deal with as it  
8 comes up in the trial.

9           Is there anything else y'all want to talk about that I have  
10 not covered that would be helpful to you as you plan?

11          Mr. Jones, you look like you have something to say.

12          **MR. JONES:** I believe it's probably a trial question.

13          **THE COURT:** Okay.

14          **MR. TYNAN:** That's it from the Government, Your Honor.  
15 Thank you very much.

16          **THE COURT:** All right. I hope I've laid everything  
17 out for you so everybody knows what to expect. You know, we've  
18 had -- I don't know how many trials I've had since the pandemic  
19 started, but -- three or four -- and, you know, we've -- the  
20 clerk has gotten pretty good at dealing with the jury and all  
21 the logistics of it. So I hope everything will run smoothly,  
22 assuming nobody gets sick. So there we are.

23          So I will need y'all to be here Monday, February 14th. You  
24 should be in the courthouse in your conference rooms by no  
25 later than nine o'clock because we could need you in the

1 courtroom as early as 9:30.

2 And the clerk -- you know, check in with the clerk, confer  
3 with her about those logistics and, you know, have your cell  
4 phones and such -- some other way she can get in touch with you  
5 other than running up the stairs, and we'll tell you when to  
6 come in the courtroom.

7 And I will -- so the first time I see you will be in the  
8 courtroom with the jury panel in here -- okay -- and then we'll  
9 go from there.

10 All right. Court is adjourned.

11 (Proceedings concluded at 4:19 p.m.)

12

13

14 **C E R T I F I C A T E**

15 I, LORI RUSSELL, RMR, CRR, United States District Court  
16 Reporter for the Middle District of North Carolina, DO HEREBY  
CERTIFY:

17 That the foregoing is a true and correct transcript of the  
18 proceedings had in the within-entitled action; that I reported  
19 the same in stenotype to the best of my ability and thereafter  
reduced same to typewriting through the use of Computer-Aided  
Transcription.

20

21



22 Lori Russell, RMR, CRR  
23 Official Court Reporter

Date: 4/5/22

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